



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

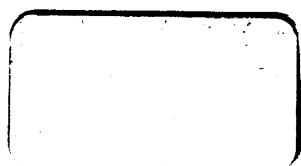
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

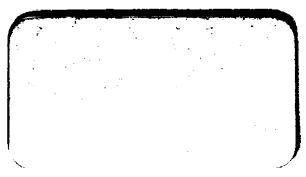
We also ask that you:

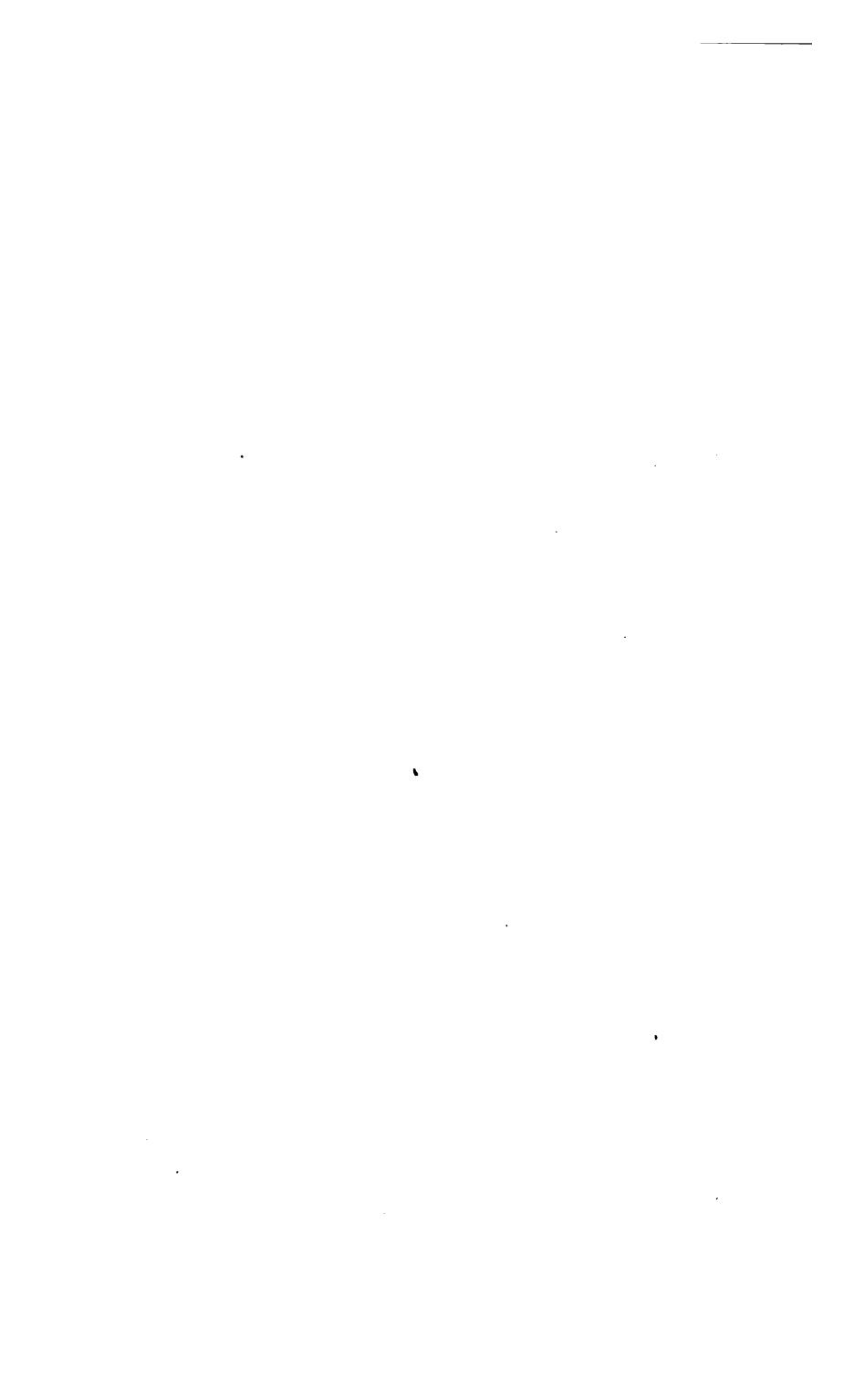
- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

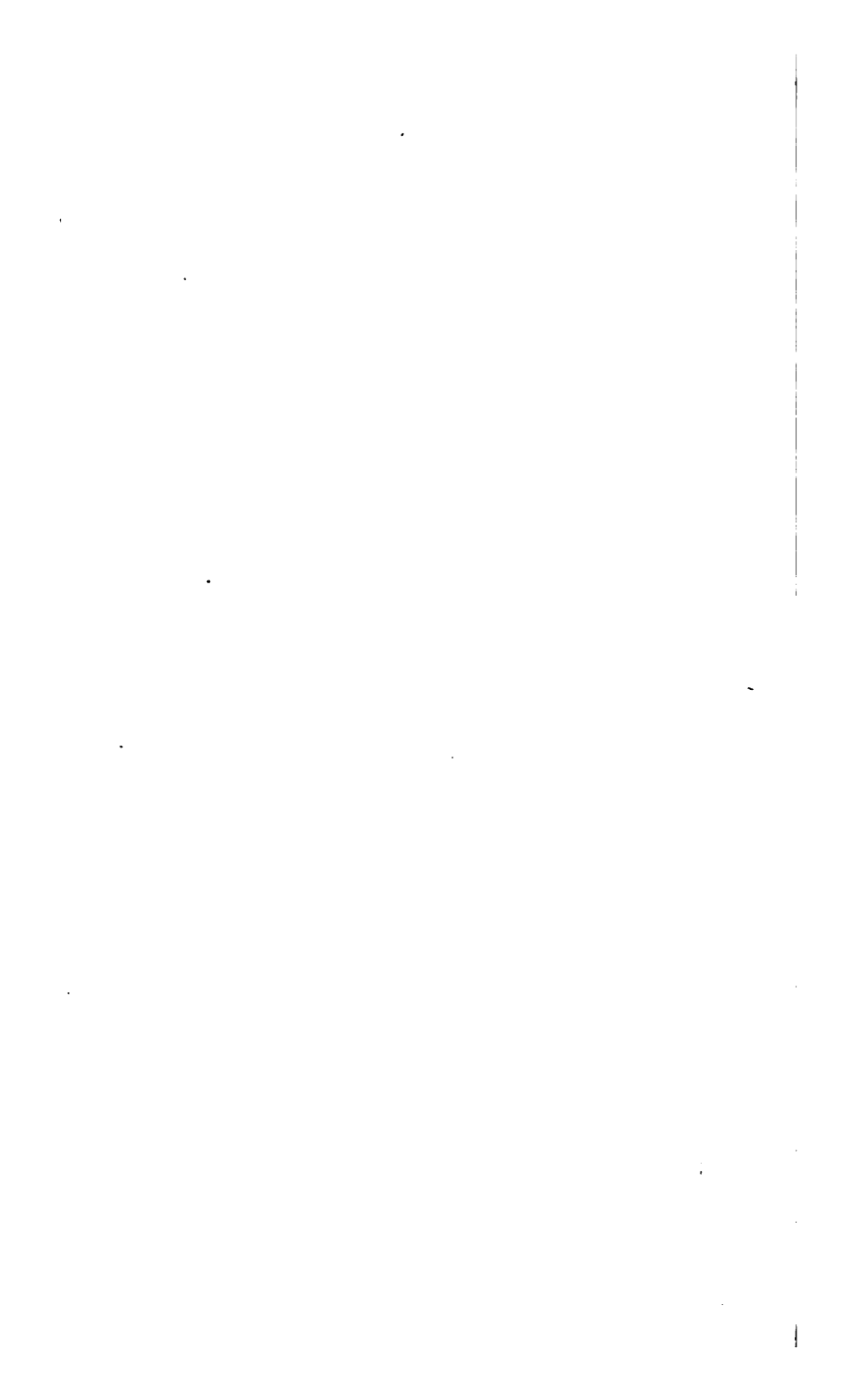
About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

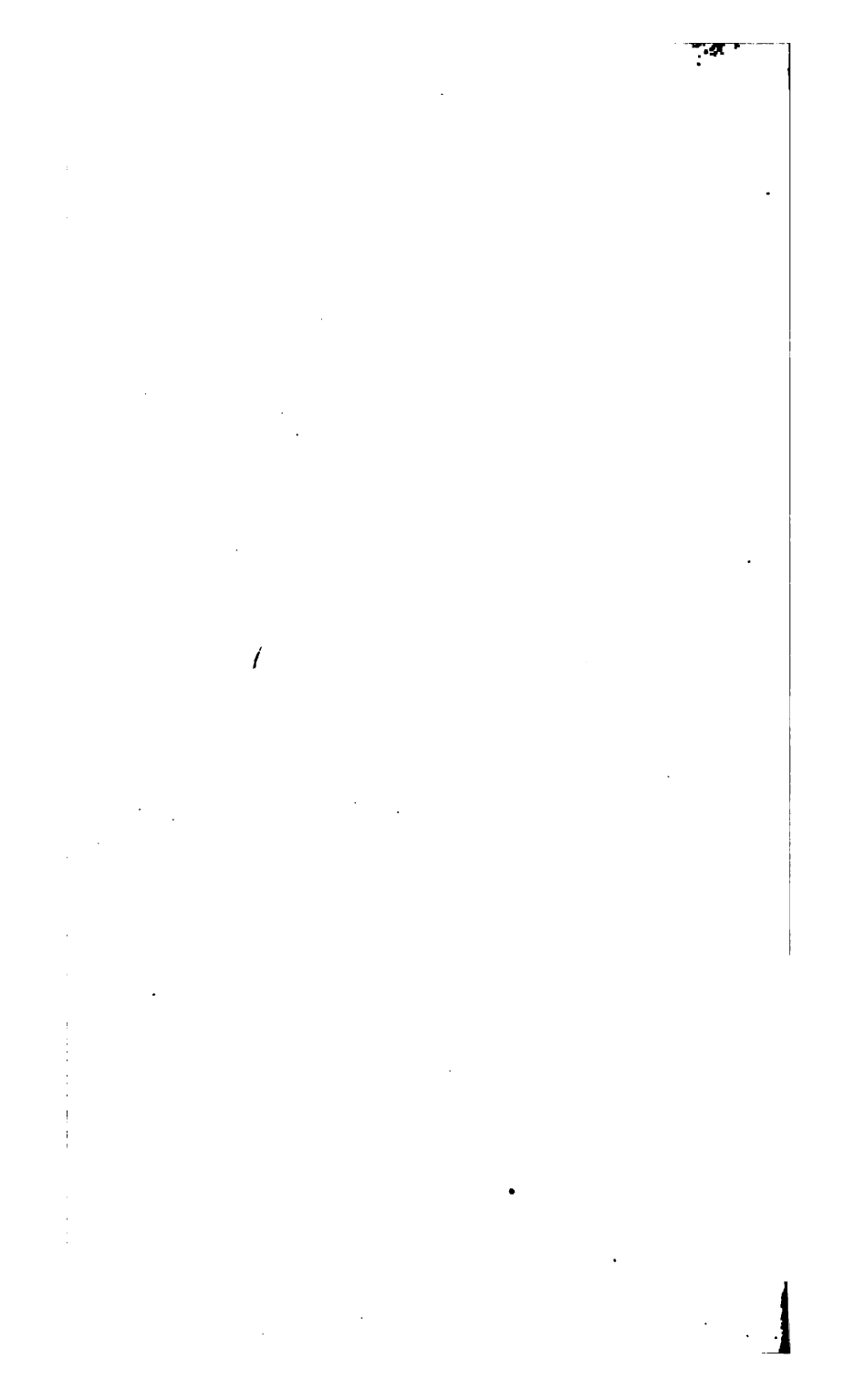


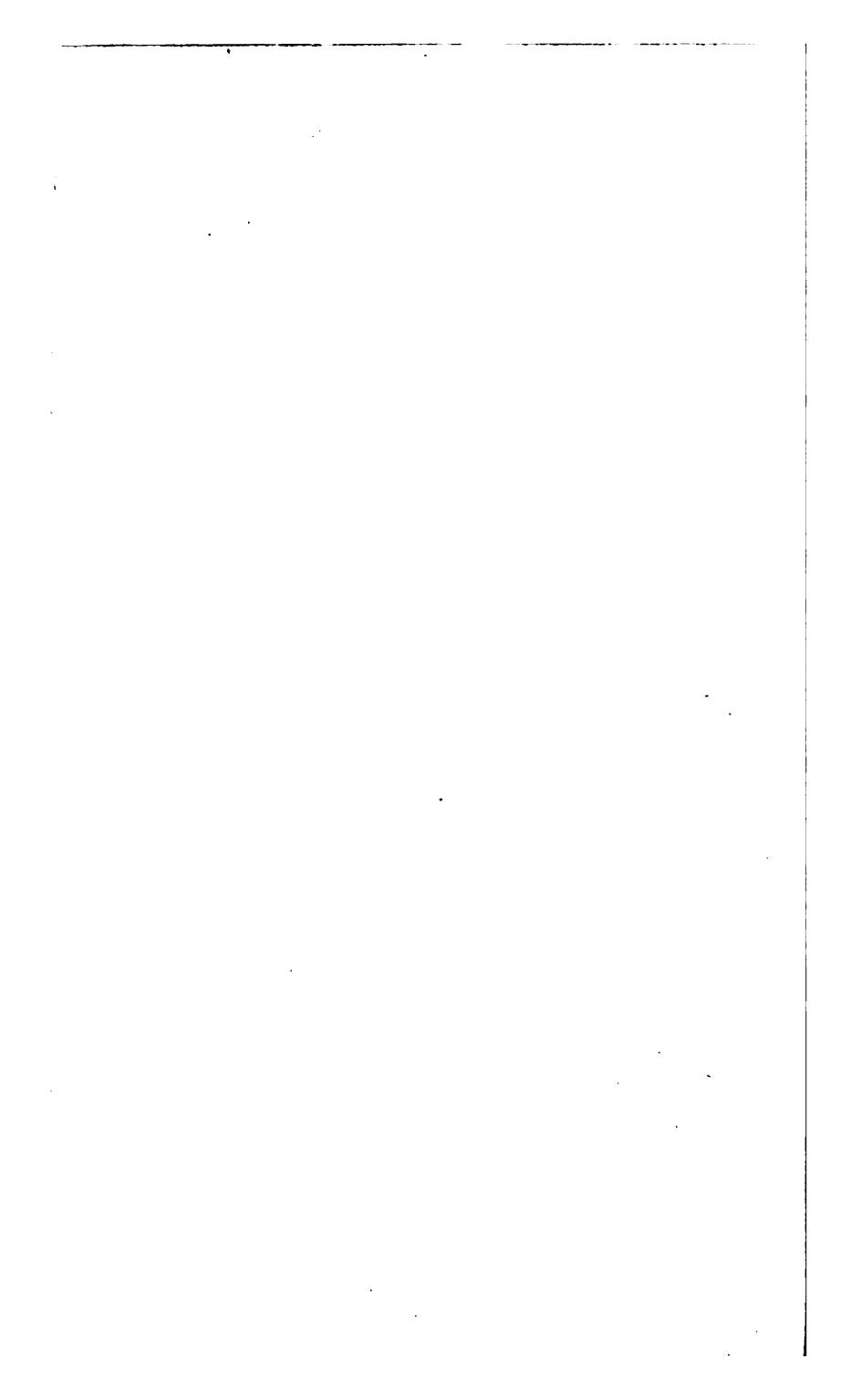






23
AS
DJm





A MANUAL
OF
EQUITY JURISPRUDENCE,
FOR
PRACTITIONERS AND STUDENTS.
FOUNDED ON THE WORKS OF
STORY, SPENCE, AND OTHER WRITERS,
AND ON
MORE THAN A THOUSAND SUBSEQUENT CASES:
COMPRISING
THE FUNDAMENTAL PRINCIPLES,
AND THE
POINTS OF EQUITY USUALLY OCCURRING
IN GENERAL PRACTICE.

By JOSIAH W. SMITH, B.C.L., Q.C.,
JUDGE OF COUNTY COURTS,
EDITOR OF "FRARNE'S CONTINGENT REMAINDERS," AND MITFORD'S "CHANCERY PLEADINGS," AUTHOR OF "A COMPENDIUM OF THE LAW OF REAL AND PERSONAL PROPERTY," "A MANUAL OF COMMON LAW," AND "A MANUAL OF BANKRUPTCY," AND ONE OF THE CONSOLIDATORS OF THE CHANCERY ORDERS.

Second American Edition.

REVISED AND ENLARGED WITH NOTES AND REFERENCES,
By EDWARD CHASE INGERSOLL,
OF THE WASHINGTON BAR,
ONE OF THE COMMISSIONERS TO REVISE THE LAWS OF THE DISTRICT OF COLUMBIA, AND EDITOR OF "SMITH'S MANUAL OF COMMON LAW."
FROM THE TWELFTH LONDON EDITION.

WASHINGTON CITY:
W. H. & O. H. MORRISON,
LAW BOOKSELLERS AND PUBLISHERS.
1878.

**LIBRARY OF THE
LELAND STANFORD JR. UNIVERSITY.**

a. 43171

AUG 27 1900

Entered according to Act of Congress in the year 1878,

By W. H. & O. H. MORRISON,

In the Office of the Librarian of Congress, at Washington, D. C.

SHERMAN & CO., PRINTERS,
S. W. CORNER SEVENTH AND CHERRY STREETS,
PHILADELPHIA.

TO THE
HONORABLE ANDREW WYLIE,
ONE OF THE JUSTICES OF THE SUPREME COURT OF THE DISTRICT
OF COLUMBIA,

This American Edition,

OF A WORK INTENDED TO FACILITATE A KNOWLEDGE OF THAT
JURISPRUDENCE WHICH HAS BEEN ADMINISTERED BY

HIS HONOR, SO LONG AND SO ABLY, IS, BY

PERMISSION, RESPECTFULLY

INSCRIBED,

BY THE EDITOR.

P R E F A C E

TO THE SECOND AMERICAN EDITION.*

THE general demand for some book which should give a succinct yet comprehensive view of the leading principles of Equity Jurisprudence with sufficient citations of authority to be of value to the practitioner, and sufficiently compact in expression to make it a more useful and desirable text-book for students than the larger treatises, has induced the editor to undertake the preparation of this edition of Smith's Manual of Equity.

The author's rare power of condensation and logical skill in the simple arrangement and exhaustive division of complicated subjects, have made his works deservedly popular in England.

The scope of the Manual is best exhibited in the

* The first American edition was a reprint of the eighth London edition, without American notes.—EDITOR.

vi PREFACE TO THE SECOND AMERICAN EDITION.

learned author's preface (*infra*). It is founded principally upon the Commentaries on Equity Jurisprudence of the late Mr. Justice Story, whose work has been justly characterized by his annotator (12th edition) as "a wonderful exposition of the Jurisprudence of Equity." It may be said to bear the same relation to the Commentaries that they bear to the Treatises and Reports on which they are founded, and to exhibit in convenient form an accurate and succinct view of Equity.

While the leading principles of Equity Jurisprudence are substantially the same in this country and in England, yet it appears their application has been varied, modified, and enlarged by the Courts of this country. And this results, among other causes, from the diversity in the prevailing laws of tenure, political divisions, legislative enactments, and public policy.

It has been the aim of the editor to exhibit these differences where they occur, and in some degree to supplement the work of the author by an adaptation of the American doctrine where there has been essential departure from the English; condensing the notes as far as practicable to conform to the plan of the original work, and referring the student to the standard treatises, text-books, and well-considered American cases for the fuller discussion of the principles and

PREFACE TO THE SECOND AMERICAN EDITION. vii

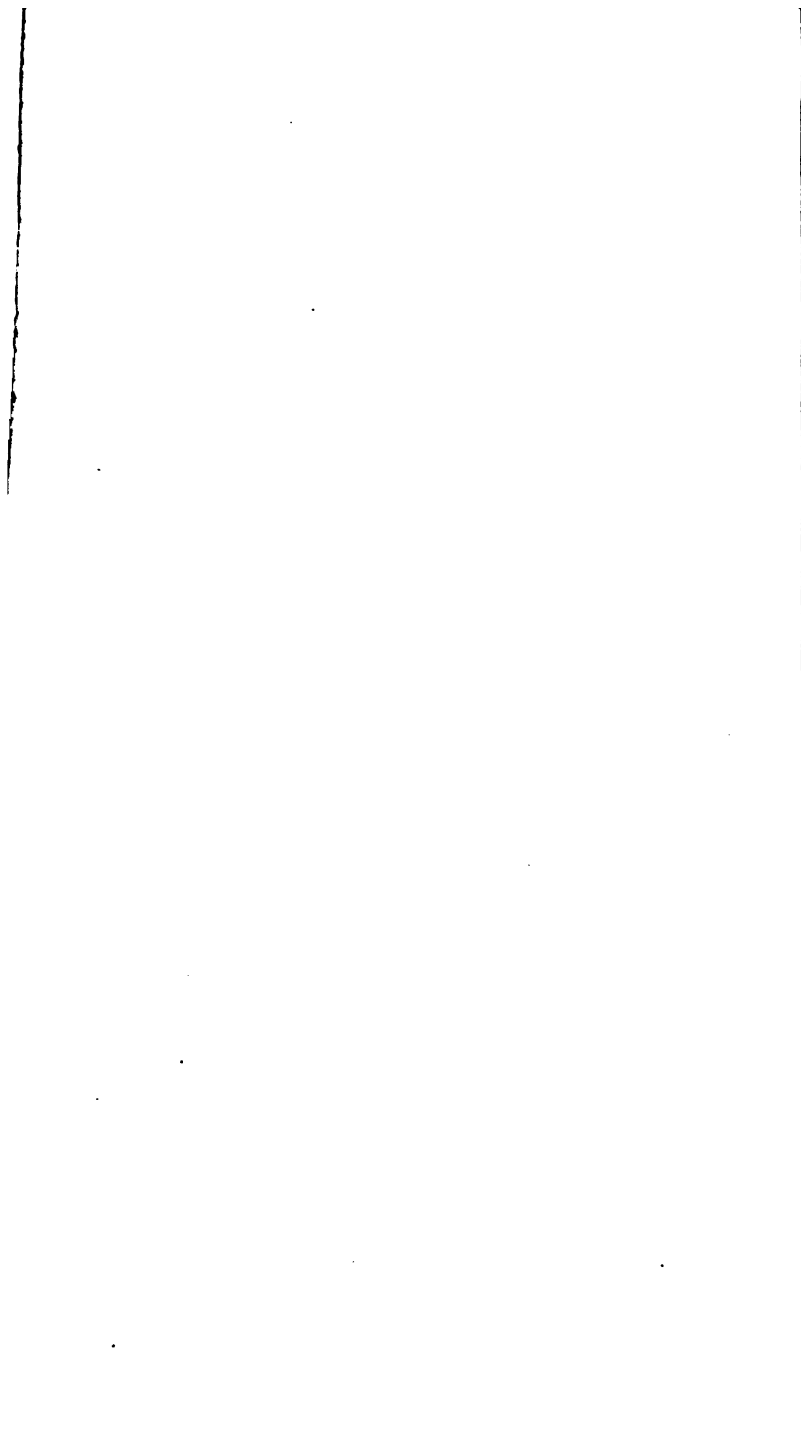
the nicer distinctions drawn. Generally, where the author has referred to the English text-books, appropriate references have been made to the American books upon the same subjects, and it is believed sufficient American cases have been cited in the notes to enhance the value of the Manual to the practitioner.

The text of the twelfth London edition (1878) has been used in this work, and the English cases (heretofore incorporated in the body of the page) have been placed at the foot with the editor's notes.

The editor is indebted in the preparation of the notes, among others referred to therein, to the admirable treatises, Perry on Trusts, Bigelow on Fraud, Jones on Mortgages, Schouler's Domestic Relations, to Sharswood's edition of Adams's Equity, and to the notes of the American editors of White and Tudor's Leading Cases in Equity (4th Am. ed.).

E. C. I.

WASHINGTON, D. C., August, 1878.



PREFACE

TO THE TWELFTH EDITION.

FOR this, as for the fifth and subsequent editions, the writer has searched the authorized Reports published since the preceding edition, and has added such further points to be found in those Reports as appeared to him to be requisite to be noticed in a book of this kind, as well as references to new cases in support of points previously inserted, and references to the new Statutes.*

This edition comprises more than a thousand cases, coming within the scope of the Manual, which have been decided since the death of Mr. Justice Story and of Mr. Spence, together with a few earlier cases. For

* His very learned friend, Mr. O. D. Tudor, the author of the "Leading Cases in Equity" (now in the fifth edition), and of other well-known and highly valuable works, kindly perused the proof-sheets of the eighth edition of this Manual.

X PREFACE TO THE TWELFTH EDITION.

the rest of the earlier cases, the reader is referred, as before, to the works of Story, Spence, and other writers, on which the Manual purports to be founded.

The "Act to confer on the County Courts a Limited Jurisdiction in Equity" (28 and 29 Vict. c. 99), called for no notice in the present work, as it merely gave those Courts the power of administering a large portion of Equity Jurisprudence, without affecting any part of that Jurisprudence at all.

It is obvious that the book must now be as applicable and useful in Equity cases in the County Courts as elsewhere.

As to the alterations made by the Judicature Acts, the reader is referred to page 10, *infra*.

J. W. S.

December, 1877.

PREFACE

TO THE THIRD EDITION.

THIS edition is founded on the learned and very valuable Treatise on "The Equitable Jurisdiction of the Court of Chancery," by the late George Spence, Esq., Q.C., as well as on the celebrated work on which the preceding editions were founded.

The second volume of Mr. Spence's work (published in the year 1849) contains upwards of 900 pages of Equity Jurisprudence, of which the writer of the Manual has, in this edition, availed himself in the same way as he had previously made use of the work of Mr. Justice Story.



P R E F A C E

TO THE SECOND EDITION.

THE writer of these pages, in publishing the first edition, was under no apprehension that a work answering to the title of the present little book would be deemed *unnecessary*. On the contrary, he was not aware of the existence of any book purporting to give a succinct yet comprehensive view of the leading principles of Equity Jurisprudence; and he believed that the want of a book of that description was greatly felt by students, and indeed by many practitioners in each branch of the profession. For the student labors under great disadvantages when he enters upon the perusal of a large treatise, without having previously read any smaller work upon the same subject; and after he has read a work of two volumes, he is able accurately to retain but few points in his memory—far fewer than he would after a careful perusal of a condensed work. And the practitioner often stands in need of a body of

points and principles, well fixed in his mind, as his constant guide and aid amidst the rapid occasions of daily practice; and yet it is impossible for him to become possessed of such a body of knowledge, except by the help of some succinct view of Equity, or by the experience gained during long and extensive practice.

The Manual is founded on the "Commentaries on Equity Jurisprudence" of the late Joseph Story, LL.D., one of the justices of the Supreme Court of the United States; and it is of a *semi-original character, bearing the same relation to the Commentaries as the Commentaries bear to the Treatises and Reports on which they are founded.* The division of the subject is original. And although many passages are mere extracts, yet the selection of such passages as expressed in the fewest words the pith of whole sections, or that view of a subject which seemed to be the more correct, involved considerable deliberation and discrimination.

And, taking the Manual as a whole, there has been the same process of analyzing, arranging, digesting, defining, distinguishing, deducing, qualifying, and commenting as in the generality of legal treatises; and the reader will scarcely suppose the amount of close consideration which has been bestowed upon so small a book.

As the learned Judge seems to have availed himself

of most of the Treatises, as well as of the Reports, in the composition of his Commentaries, there appeared to be no necessity, in general, for the writer's consulting other works besides the Commentaries, while engaged upon the Manual, unless he had designed to enter more into detail. At the same time he has written under the light derived from the previous perusal of other works. And he has noticed several recent enactments, which, as not applicable to America, the learned Judge has omitted.

With regard to the principle of selection, the writer has endeavored to collect together, under appropriate heads, the points usually occurring, and necessary to be accurately known and constantly borne in mind by every chancery and conveyancing counsel, and by every solicitor; and for that purpose he has labored to extract and mould into a concise and perspicuous form the essence of the Commentaries, which comprise upwards of 1700 pages; omitting points of law in some instances, and such cases in Equity as are of a peculiar nature and not likely to occur again; and also omitting, except where it seemed advisable to use them as examples, such cases as are of so simple and obvious a character, that the decisions respecting them embody nothing more than so plain and necessary an application of points and principles stated in the work, that

it would be sure to suggest itself at once, without variation, to the minds of different individuals.

A host of English treatises and cases are cited by the learned Judge and author, exclusively of the American decisions. The points comprised in the following pages are those in support of which English authorities are cited.

The want of references to the authorities themselves, may seem, at first sight, to be a strong ground of objection in the eyes of those who do not possess the Commentaries. But, in reality, it is not so. For the insertion of those references would have doubled the bulk and price of the Manual; and it is rarely necessary or advisable for the student to consume his time by referring to the authorities; and with respect to those who are engaged in practice, the earlier editions of the Commentaries contain almost all the sections referred to in these pages, numbered in the same manner; although the last, that is, the fourth edition, is the edition of the Commentaries from which the present edition of the Manual has been prepared for the press.

The writer has generally prefixed the word "see" to the references, where he has interspersed original matter, or has modified, in point of substance, the statements he has taken from the Commentaries, with reference to cases contained in other passages, or other-

wise ; or where he has deduced, rather than abstracted, the points from a passage in the Commentaries ; or where he has blended together, for the sake of brevity, precision, or otherwise, the ideas contained in two or more passages ; or where he has expressed his own views, or has laid down original propositions, but has referred to passages in the Commentaries in support of such views or propositions. For those paragraphs to which no reference is added, he alone is responsible.

CONTENTS.

INTRODUCTION.

	PAGE
SECT. I.— <i>Of the Nature of Equity Jurisprudence, and the Extent of Equity Jurisdiction,</i>	1
II.— <i>Of the General Effect of the Judicature Acts, as regards Equity Jurisdiction and Jurisprudence,</i>	10
III.— <i>Of the General Maxims of Equity Jurispru- dence,</i>	12
IV.— <i>Of the Division of Equity,</i>	33

TITLE I.

Of Remedial Equity.

SPECIFICALLY SO TERMED.

CHAP. I.—OF ACCIDENT,	37
II.—OF MISTAKE,	44
III.—OF ACTUAL FRAUD,	54
IV.—OF CONSTRUCTIVE FRAUD,	68

TITLE II.

Of Executive Equity.

CHAP. I.—OF LEGACIES AND PORTIONS,	107
II.—OF DONATIONS MORTIS CAUSA,	113

	PAGE
III.—OF EXPRESS PRIVATE TRUSTS, EVIDENCED BY SOME WRITTEN DOCUMENT,	116
IV.—OF EXPRESS CHARITABLE TRUSTS,	141
V.—OF IMPLIED TRUSTS,	146
VI.—OF CONSTRUCTIVE TRUSTS,	166
VII.—OF TRUSTEES AND OTHERS STANDING IN A FI- DUCIARY RELATION,	175
VIII.—OF THE SPECIFIC PERFORMANCE OF AGREE- MENTS AND DUTIES NOT ARISING FROM TRUSTS,	206

TITLE III.

Of Adjustive Equity.

CHAP. I.—OF ACCOUNT IN GENERAL,	243
II.—OF ADMINISTRATION,	248
III.—OF MORTGAGES, PLEDGES, AND LIENS,	274
SECT. 1.— <i>Of Legal Mortgages of Real Property,</i>	274
2.— <i>Of Equitable Mortgages,</i>	312
3.— <i>Of Mortgages and Pledges of Personal Prop-</i> <i>erty,</i>	315
4.— <i>Of Liens,</i>	319
IV.—OF APPORTIONMENT AND CONTRIBUTION,	322
V.—OF PARTNERSHIP,	329
VI.—OF CERTAIN SPECIAL ADJUSTMENTS IN THE CASE OF DEBTORS AND CREDITORS,	335
SECT. 1.— <i>Of the Marshalling of Securities,</i>	335
2.— <i>Of the Mutual Right to the Benefit of Securi-</i> <i>ties between a Creditor and Sureties;</i> <i>and of the Release of Sureties,</i>	336
3.— <i>Of Set-off or Counter-claim,</i>	339
VII.—OF CERTAIN MISCELLANEOUS CASES OF AC- COUNT,	342
VIII.—OF DAMAGES AND COMPENSATION,	344

	PAGE
IX.—OF ELECTION,	349
X.—OF SATISFACTION,	357
XI.—OF PARTITION; OF SETTLEMENT OF BOUN- DARIES; AND OF ASSIGNMENT OF DOWER, .	365
SECT. 1.— <i>Of Partition</i> ,	365
2.— <i>Of the Settlement of Boundaries</i> , . . .	368
3.— <i>Of the Assignment of Dower</i> ,	369

TITLE IV.

Of Protective Equity.

IRRESPECTIVE OF DISABILITY.

CHAP. I.—OF PROTECTION FROM LITIGATION OR INJURY, AFFORDED BY THE CANCELLING, DELIVER- ING UP, AND SECURING OF DOCUMENTS, .	373
II.—OF PROTECTION FROM LITIGATION RESPECT- ING THE PROPERTY OF ANOTHER BY MEANS OF INTERPLEADER,	378
III.—OF PROTECTION FROM REPEATED OR RENEWED LITIGATION, AFFORDED BY DECREES UPON BILLS OF PEACE OR PROCEEDINGS TO ES- TABLISH WILLS,	382
SECT. 1.— <i>Of Bills of Peace</i> ,	382
2.— <i>Of Proceedings to Establish Wills</i> , . . .	384
IV.—OF PROTECTION FROM LOSS OR INJURY BY IN- JUNCTION,	386
V.—OF PROTECTION FROM ANOTHER'S ABSCOND- MENT, BY THE WRIT OF NE EXEAT REGNO, .	397
VI.—OF THE PROTECTION OF PROPERTY, BY TAKING AWAY THE POSSESSION OR RECEIPT THERE- OF, OR BY REQUIRING SECURITY,	399

TITLE V.

Of Protective Equity.

IN FAVOR OF PERSONS UNDER DISABILITY.^(a)

	PAGE
CHAP. I.—OF INFANTS,	405
II.—OF MARRIED WOMEN,	417
SECT. 1.— <i>The Powers which Husband and Wife have,</i> <i>in Equity, of Contracting with, and Giving</i> <i>and Granting to, each other,</i>	418
2.— <i>Pin-money and Paraphernalia,</i>	421
3.— <i>The Wife's Separate Estate,</i>	423
4.— <i>The Wife's Equity to a Settlement or Main-</i> <i>tenance out of her own Property,</i>	447
5.— <i>Some Miscellaneous Points,</i>	458

TITLE VI.

Of Auxiliary Equity.

CHAP. I.—OF A DISCOVERY IN AID OF A SUIT OR DE-	
FENCE IN ANOTHER COURT,	463
II.—OF THE TAKING AND PRESERVING OF TESTI-	
MONY IN AID OF A SUIT OR DEFENCE IN	
ANOTHER COURT,	468

APPENDIX.

31 AND 32 VICT. C. 40,	472
39 AND 40 VICT. C. 17,	477
30 AND 31 VICT. C. 48,	482
36 AND 37 VICT. C. 66,	486

(a) Some observations are made on transactions with persons of unsound mind in the chapter on Actual Fraud. But the general subject of persons of unsound mind does not properly form part of Equity Jurisprudence, and therefore is omitted in this edition.

TABLE OF CASES. (a)¹

The figures refer to the paragraphs, and not to the pages,
except where otherwise indicated.

A.	
Abbott, Anderson v. 681, 689, 823	Aldrich v. Cooper, 493
v. Sworder, 122	Aleyn v. Belchier, 203
Aberaman Ironworks v. Wick- ens, 415	Alford, Attorney-General v. 358
Ackroyd v. Smithson, 295	Allan v. Gott, 477
Acraman v. Corbett, 183.	Allen v. Bonnett, 183
Acworth, Coutts v. 200, 681.	Dewey v. 345
Addison, Cook v. 363	v. Hammond, 87
v. Cox, 436	Lacon v. 592
Adsetts v. Hives, 133	Smith v. 762
Advocate-General of Bengal, Lyons (Mayor of) v. 276	Alloway v. Braine, 33
Agar v. Fairfax, 715	Allsopp v. Wheatcroft, 141
Agra Bank, Ex parte, 436	Alston v. Mundford, 493
v. Barry, 534	Alt v. Alt, 450
Airey v. Hall, 421	Alton M. and F. Ins. Co. v. Buckmaster, 720
Aldam, Jarratt v. 147	Alton v. Harrison, 183
Alderson v. White, 506	Ames v. Clark, 238
	Amherst Bank, Lathrop v. 430
	Amicable Assurance Office, Pear- son v. 421
	Amis v. Witt, 220

(a) This comprises more than 1050 cases from the authorized Reports published during the last twenty-three years, with a few earlier cases. For the rest of the earlier cases the reader is referred to the works of STORY, SPENCE, and others, on which this Manual purports to be founded.

¹ The American cases cited by the editor have been incorporated in this table.

- Amis, Witt *v.* 220
 Anderson *v.* Abbott, 681, 689, 823
 v. Elsworth, 200
 Andrews, Sherwood *v.* 421
 v. Sparhawk, 263
 Angle, Ex parte, 371
 Annesley, Macleod *v.* 352
 Anstey, Stroughill *v.* 263, 379
 Arkwright, Daniel *v.* 89
 Armstrong, Walker *v.* 89
 Arthur, Hotten *v.* 774
 Ashbee, Kempson *v.* 149, 150
 Ashburner, Fletcher *v.* 47, 409
 Ashford, Squires *v.* 883
 Ashton, Ion *v.* 477, 480
 Ashton's Charity, Re, 277
 Askey, Birds *v.* (No. 2), 498
 Astor *v.* Wells, 190
 Astor's Ex'rs., Langdon *v.* 704
 Atkinson, In re, 439
 v. Smith, 196, 574
 Atlantic Bank *v.* Harris, 187
 Atterbury *v.* Wallis, 187, 190
 Attorney-General *v.* Alford, 358
 v. Beverly (Corp. of), 277, 278
 v. Chesterfield (Earl of), 465
 v. Davey, 278
 v. Greenhill, 285
 Jauncy *v.* 496
 v. Leicester (Corp. of), 372
 Magdalen College *v.* 278
 Merchant Tailors' Company *v.* 277
 v. Trin. Coll. Cambridge, 277
 v. Wilkins, 34
 Attwood, Lloyd *v.* 193
 Atwell, Reese River Silver Mining Company *v.* 183
 Auldjo, Wallace *v.* 889
 Austin, Mildred *v.* 555
 Ayerst *v.* Jenkins, 732
 Ayles *v.* Cox, 424
 Aylesford (Earl of) *v.* Morris, 168, 171
 Aylward, Dolphin *v.* 193

 B.
 Babcock, Corn Ex. Ins. Co. *v.* 856
 B—— *v.* W——, 424, 725, 727
 W—— *v.* 424, 725, 727
 Baddeley, Jennings *v.* 640
 Porter *v.* 359
 Bagot *v.* Bagot, 480, 764, 765
 Bagshaw, Evans *v.* 718
 v. Winter, 883, 884
 Bagster *v.* Fackerell, 300
 Bailey's Settlement, In re, 216
 Baillie *v.* Baillie, 56
 Bain *v.* Brown, 155
 Bainbrigge, Moss *v.* 155
 Baines, Smee *v.* 661
 Baker *v.* Bradley, 149
 v. Gray, 530
 v. Monk, 123, 124
 v. Read, 33
 Reeves *v.* 233
 Thornborough, *v.* 339
 Baldwin, Fisher *v.* 661
 Baltimore (Lord), Penn *v.* 54
 Balto. & Ohio R. R., Marshall *v.* 142
 Bank of Alexandria *v.* Lynn, 424
 Bank of Hindustan, etc., In re, Ex parte Smith, 616
 London *v.* Tyrrell, 155
 160
 New Orleans *v.* Torrey, 160
 Potomac, McLoughlin *v.* 183
 Tyrrell *v.* 155
 160
 United States, Etting *v.* 116

- Bank of the United States *v.* Daniel, 82
 Whitehaven, Dawson *v.* 555
 Banks, Lloyd *v.* 436
 Barber, Kimber *v.* 160
 Bardwell *v.* Bardwell, 305
 Barfield *v.* Loughborough, 646
 Baring, Trail *v.* 112 a
 Barker *v.* Barker, 621
 Barker, Parker *v.* 744
 Barling *v.* Bishop, 183
 Barlow, Bowen *v.* 585
 Broadbent *v.* 190
 Barnard *v.* Ford, 875
 Barnes *v.* Bond, 625
 v. Wood, 187
 Barnwell *v.* Iremonger, 475
 Barr's Trust, In re, 436
 Barrett, Box *v.* 695
 v. Hartley, 345, 365
 Saltmarsh *v.* 294
 Waller *v.* 383
 Barrow *v.* Barrow, 871
 Wolterbeek *v.* 89
 Barrs *v.* Fewkes, 233
 Barry, Agra Bank *v.* 534
 v. Croskey, 112 a
 v. Stevens, 454
 Bartlett *v.* Bartlett, 436
 Barton, Beckton *v.* 708
 v. Vanheythuyssen, 183, 193.
 Barwell *v.* Barwell, 33
 Baseley, Huguenin *v.* 148, 200
 Bascomb *v.* Beckwith, 424
 Basset *v.* Nosworthy, 34, 338, 376
 Bate *v.* Hooper, 359
 Rhodes *v.* 148
 Bates, Blackett *v.* 441
 Bates's Case, 429
 Batstone *v.* Salter, 313
 Baud *v.* Fardell, 351
 Baxter *v.* West, 640
 Bayley, Williams *v.* 131
 Baylis, Chowne *v.* 435
 Bayapoole *v.* Collins, 196
 Beadel, Ormes *v.* 424, 441
 Beadon, Bridge *v.* 436
 Beak *v.* Beak, Beak's Estate, In re, 220
 Beak's Estate, In re, Beak *v.* Beak, 220
 Beal, Phillips *v.* (No. 2), 387
 Beal *v.* Symonds, 591
 Beatty *v.* Clark, 79
 Beaumont *v.* Oliveira, 496
 Beck, Sterne *v.* 674
 Beckton *v.* Barton, 708
 Beckwith, Bascomb *v.* 424
 Beckwith, Otis *v.* 421
 Beech *v.* Keep, 421
 Beecher *v.* Major, 313
 Beevor *v.* Luck, 554
 Beioley *v.* Carter, 424
 Belcher, Hunter *v.* 460
 Belchier, Aleyn *v.* 203
 Bell *v.* Carter, 509
 v. Holtby, 424
 Mortimer *v.* 424
 Wilson *v.* 808
 Belmont, Frost *v.* 142
 Bennett *v.* Wyndham, 357
 Bennett, Eaton *v.* 91
 v. Lytton, 383
 Benson, Pearson *v.* 154
 Bentley *v.* Craven, 160
 v. Mackay, 81
 Benwell *v.* Inns, 141
 Berdoe *v.* Dawson, 149
 Bergen, Staat *v.* 333
 Berham, Taylor *v.* 409
 Bernard *v.* Minshull, 235
 Berridge, Nesbitt *v.* 169
 Berrington, Rees *v.* 164
 Bessey *v.* Windham, 183
 Bethell *v.* Green, 475
 Betjemann, Dowling *v.* 405
 Betton's Trust Estate, In re, 574
 Beverly (Corporation of), Attorney-General *v.* 277, 278
 Beverly, Peters *v.* 47
 Bewicke, Manby *v.* 128
 Beynon *v.* Cook, 169

- Bibby, Hodgson *v.* 33
 v. Thompson (No. 1), 233
 Biddle *v.* Jackson, 816
 Bigelow *v.* Comegys, 133
 Bingham, Bleeker *v.* 823
 Bird, In re, Oriental Commercial
 Bank *v.* Savin, 357
 Birds *v.* Askey (No. 2), 498
 Birkley *v.* Presgrave, 636
 Biron *v.* Mount, 250
 Bishop, Cox *v.* 438
 Obee *v.* 462
 Bishopp, Barling *v.* 183
 Blackburn, Byne *v.* 233
 Blackett *v.* Bates, 441
 Blagrove, Powys *v.* 763
 v. Routh, 33
 Blaiklock *v.* Grindle, 686
 Blakeway, Steward *v.* 647
 Blandy *v.* Widmore, 51, 316
 Blandheir *v.* Moore, 785
 Blatchford *v.* Woolley, 856, 857
 Bleeker *v.* Bingham, 823
 Blest *v.* Brown, 164
 Bloodgood, Kane *v.* 33
 Bloxham, South *v.* 494
 Bloye's Trust, In re, 154
 Boardman, Phillips *v.* 204
 Bold *v.* Hutchinson, 95
 Bolton, Ramshire *v.* 112 a
 Bonany *v.* Gurety, Larios *v.* 451
 Bond, Barnes *v.* 625
 v. England, 479
 Bone, Dilrow *v.* 421
 v. Pollard, 313
 Bonnett, Allen *v.* 183
 Bonser *v.* Kinnear, 233
 Boone *v.* Chiles, 33, 34
 Booth *v.* Turle, 179
 Borthoud, Sacia *v.* 192
 Bostock *v.* Floyer, 357
 Boston Marine Ins. Co., Graves *v.*
 89
 Bosville, Glenorchy (Lord) *v.*
 30, 89, 236
 Bott *v.* Smith, 183
 Boulter, In re, Ex parte Na-
 tional Provincial Bank, 89
 Boulton, Ex parte, 436
 Bourne, Wills *v.* 496
 Bouts *v.* Ellis, 220
 Bouverie, Kensington (Lord) *v.*
 629
 Boynton *v.* Hubbard, 136
 Bowen *v.* Barlow, 585
 Bower, Crosskill *v.* 365
 Bowes, Strathmore (Countess of)
 v. 182
 Bowring, Long *v.* 453
 Box *v.* Barrett, 695
 Boyle, Hill *v.* 431
 Boys *v.* Boys, 359
 Boyse *v.* Rossborough, 130, 131
 754
 Bradford (Earl of) *v.* Romney
 (Earl of), 89
 Bradford *v.* Union Bank, 89
 Bradley, Baker *v.* 149
 Bradshaw, Salter *v.* 169
 Bradwell *v.* Catchpole, 372
 Braine, Alloway *v.* 33
 Brant's Will, 477
 Brashear *v.* West, 435
 Brashier *v.* Gratz, 413
 Braybroke *v.* Inskip, 585
 Bremridge, Evans *v.* 658
 Brennan, Strange *v.* 155
 Brereton, Drosier *v.* 352
 Brice *v.* Stokes, 348, 368
 Bridge *v.* Beadon, 436
 v. Bridge, 421
 Briggs *v.* Jones, 535
 Langdale (Lady) *v.* 479
 v. Penny, 233, 235, 287
 Bright *v.* Larcher, 477
 (No. 2), 33,
 476
 v. Legerton, 33
 British Mutual Investment Com-
 pany *v.* Smart, 597
 Britten, Green *v.* 830
 Brittlebank *v.* Goodwin, 462
 Broadbent *v.* Barlow, 190
 Broadmead, Dilkes *v.* 487
 Brock, Probst *v.* 539
 Broderick's Will, 105

- Brocklehurst, Horton *v.* (No. 2), 366
 Bromley *v.* Brunton, 220
 v. Smith, 169
 Brooke, In re, Brooke *v.* Rooke, 304
 v. Haymes, 89
 v. Mostyn (Lord), 88
 v. Rooke, In re, Brooke, 304
 Brooking, Francis *v.* 883
 Brooks, Harris *v.* 164
 Farnham *v.* 162
 Brotheridge, Lechmere *v.* 848, 850
 Broughton *v.* Broughton, 345
 v. Hutt, 81
 Jennings *v.* 112
 Broun *v.* Kennedy, 93, 148, 153
 Brown, Bain *v.* 155
 Brown, Blest *v.* 164
 v. Brown, 689
 v. Gellatly, 359
 Gillian *v.* 712
 v. Leach, 112
 Malins *v.* 448
 Shepard *v.* 454
 v. Tanner, 436
 Brown's Trusts, In re, 436
 Browne, Greville *v.* 304
 v. Savage, 436
 Brownson *v.* Lawrance, 475
 Brumridge *v.* Brumridge, 369
 Brunton, Bromley *v.* 220
 Bubb, Pride *v.* 849
 v. Yelverton, Ex parte Hastings, 768
 Buccleuch (Duke of) *v.* Metropolitan Board of Works, 440
 Buchanan, Fleming *v.* 475
 v. Harrison, 295, 300
 Buck, Vaughan *v.* 883
 Buckmaster, Alton M. and F. Ins. Co. *v.* 720
 Hamilton *v.* 424
 Budge *v.* Gummow, 352
 Buller *v.* Plunkett, 436
 Bulteel, Cavander *v.* 187, 190
 Bunny, Shaw *v.* 545
 Burdick *v.* Garrick, 462
 Burke, Whiting *v.* 634
 Burkham, Wiggins *v.* 457
 Burn *v.* Carvalho, 435
 Kemp *v.* 400
 Burnham *v.* Kempton, 770
 Burrow, Tucker *v.* 313
 Burrows, Keith *v.* 53
 Burt, Thurman *v.* 131
 Burton, Maxfield *v.* 187, 190
 Bury *v.* Oppenheim, 149
 Buss, Pledge *v.* 655
 Butler *v.* Cumpston, 856
 Byne *v.* Blackburn, 233
- C.
- Caballero *v.* Henty, 424
 Camm, Goulder *v.* 830
 Campbell *v.* Campbell, 704
 v. Ingilby, 67
 Campbell's Trusts, In re, 341
 Carew, Clive *v.* 856
 v. Cooper, 429
 Carew's Estate, Re, 178
 Carpmael *v.* Powis, 87
 Carr *v.* Living (No. 2), 808
 Carr's Trusts, In re, 880
 Carrington, Evans *v.* 898-900
 Carron Company, Strainton *v.* 664
 Carter, Beioley *v.* 424
 Bell *v.* 509
 v. Carter, 34, 535
 v. Wake, 605, 612
 Cartwright, Thompson *v.* 190
 Carvalho, Burn *v.* 435
 Caspell *v.* Dubois, 149
 Castle *v.* Castle, 233
 v. Wilkinson, 416
 Catchpole, Bradwell *v.* 372
 Cathcart *v.* Robinson, 424
 Caton *v.* Rideout, 855
 Catt *v.* Tourle, 141
 Cavander *v.* Bulteel, 187, 190
 Cavendish *v.* Geaves, 661

- Cecil, Webster *v.* 424
 Challis, Rogers *v.* 451
 Chambers *v.* Crabbe, 149
 v. Goldwin, 804
 Chaplin *v.* Young (No. 2), 365
 Chapman, Fitzgerald *v.* 900
 Charlesworth *v.* Jennings, 112 a
 Charlton *v.* West, 704
 Charnley, Woodford *v.* 421
 Chartered Bank of India, etc., *v.*
 Henderson, 439
 Chauntler's Claim, In re Hasel-
 foot's Estate, 604
 Cheese, Tench *v.* 467, 477
 Cheeseborough, Cordingley *v.* 415
 Cherrill, Smith *v.* 183
 Chertsey Market, In re, 371
 Chesterfield (Earl of), Attorney-
 General *v.* 465
 v. Janssen, 165
 Chew et al., Gaines et ux. *v.* 105
 Chichester, Coventry *v.* 704
 (Lord) *v.* Coventry,
 704, 706
 Child *v.* Mann, 744
 Phipps *v.* 661
 Childs, Trist *v.* 142
 Chiles, Boone *v.* 33, 34
 Chorlton, Newton *v.* 655
 Chowne *v.* Baylis, 435
 Chubb *v.* Stretch, 856
 Churchill *v.* Churchill, 681
 Clark, Ames *v.* 238
 Beatty *v.* 79
 v. Clark, 475
 Cornish *v.* 183
 v. Fergusson, 771
 v. Leach, 639
 v. Malpas, 123
 Clark's Ex'rs., Russell *v.* 12
 Clarke, Fenwick *v.* 355
 v. Franklin, 299
 v. Hilton, 301
 Parker *v.* 581
 Clarkson, Tildesley *v.* 424
 Clegg *v.* Edmonson, 33, 333
 v. Rowland, 383
 Clements, Wilkinson *v.* 424
 Clemow, Francis *v.* 304
 v. Geach, 34
 Clendinen, Hitchcock *v.* 890
 Clifton, Wintour *v.* 681, 682,
 690
 Clive *v.* Carew, 856
 Coburn, Parker *v.* 712
 Cochrane *v.* Willis, 87, 424
 Cockell *v.* Taylor, 123
 Cockerell, Munch *v.* 371
 Stuart *v.* 436
 Codrington *v.* Lindsay, 689
 Coenen, Taylor *v.* 183
 Cogan *v.* Duffield, 89
 Cohen, Onions *v.* 725
 Coke, Prees *v.* 158
 Coole *v.* Willard, 712
 Coleman, Imperial Mercantile
 Credit Association *v.* 333
 Coles *v.* Pilkington, 447
 Collier *v.* McBean, 424
 Collins, Bayspoole *v.* 196
 Eddleston *v.* 574
 Turner *v.* 149, 150
 Colshead, Wall *v.* 300
 Colthurst, Tomkins *v.* 475
 Colyer *v.* Finch, 34, 535
 Comegys, Bigelow *v.* 133
 Commissioners of Public Works
 v. Harby, 177
 Comptoir d'Escompte de Paris,
 Henderson *v.* 439
 Comptoir d'Escompte de Paris,
 Rodger *v.* 439
 Comstock *v.* Johnson, 39
 Conron *v.* Conron, 305
 Consequa *v.* Willings, 85
 Consolidated Investment and In-
 surance Co. *v.* Riley, 535
 Conyers, Wake *v.* 720
 Cook *v.* Addison, 363
 Beynon *v.* 169
 v. Gregson, 469
 Miller *v.* 40, 168, 170
 v. Rosslyn (Earl of), 741
 Hickman *v.* 720
 v. Tullis, 439
 Cooke, Jeans *v.* 314

- Cooke *v.* Lamotte, 200
 Vorley *v.* 112
 Cookson, Somerset (Duke of) *v.* 791
 Coombs, Pain *v.* 448
 Cooper, Aldrich, *v.* 493
 Carew *v.* 429
 v. Cooper, 681
 Haymes *v.* 617
 v. Joel, 725
 v. Macdonald, 708
 v. Phibbs, 87
 v. Wormald, 376
 Corbett, Acraman *v.* 183
 Corcoran, Judson *v.* 435
 Cordingley *v.* Cheeseborough, 415
 Corles, Dipple *v.* 230
 Corn Ex. Ins. Co. *v.* Babcock, 856
 Cornelius, Taylor *v.* 509
 Cornish *v.* Clark, 183
 Cory *v.* Eyre, 50, 529
 Cosnahan *v.* Grice, 223
 Cotterell *v.* Stratton, 521
 Cotton, Garth *v.* 319
 Coutts *v.* Acworth, 200, 681
 Coventon, Cox *v.* 424
 Coventry *v.* Chichester, 704
 Chichester (Lord) *v.* 704, 706
 v. Coventry, 477
 Coverdale *v.* Eastwood, 450
 Cowan, Stokoe *v.* 183
 Cowdry *v.* Day, 154
 Cowell *v.* Gatcombe, 356
 Cowgil *v.* Rhodes, 753
 Cowles *v.* Gale, 413
 Cows *v.* Cows, 792, 799
 Cowne, Spaight *v.* 190
 Cowperthwaite, Jones *v.* 856
 Cox, Addison *v.* 436
 Ayles *v.* 424
 v. Bishop, 438
 v. Coventon, 424
 Horsley *v.* 32
 Page *v.* 232
 Somerset *v.* 436
 Crabbe, Chambers *v.* 149
 Craddock, Lake *v.* 315
 Craddock *v.* Owen, 294
 Craig *v.* Leslie, 47, 295, 301, 409
 v. Parkis, 436
 Cram *v.* Mitchell, 162
 Crampton *v.* Varna Railway Company, 405
 Craven, Bentley *v.* 160
 Crawshay *v.* Maule, 637
 Cregoe, Gulley *v.* 233
 Crehore, Gibson *v.* 558
 Crealock, Heath *v.* 34
 Croft *v.* Graham, 168
 v. Thompson, 762
 Roberts *v.* 592
 Crompton *v.* Pratt, 464
 Crosky, Barry *v.* 112 a
 Crosskill *v.* Bower, 365
 Crossland, Sugden *v.* 365
 Croucher, Slim *v.* 112 a, 177
 Croxton *v.* May, 883
 Croy, Jackson *v.* 123
 Cubitt, Stansfeld *v.* 436
 Cuddee *v.* Rutter, 405, 453
 Cullen, Graeme *v.* 567
 Culverwell, Douglas *v.* 124
 Cumberland, Scott *v.* 475
 Cumpston, Butler *v.* 856
 Curnick *v.* Tucker, 233
 Curtis *v.* Engels, 856
 Cutler, In re, 871 883
- D.
- Dady *v.* Hartridge, 475
 Dakin *v.* Whimper, 193
 Dally *v.* Wonham, 160, 169
 Dance *v.* Goldingham, 377
 Danforth *v.* Streeter, 431
 Daniel *v.* Arkwright, 89
 Daniel, Bank of United States *v.* 82
 Gibbs *v.* 154
 Darbey *v.* Whitaker, 440
 Darby *v.* Darby, 647
 Harbin *v.* (No. 1), 345

- Dare, Greenslade *v.* 34
 Darell, Egmont *v.* 753
 Darling, Green *v.* 661
 Lewis *v.* 57
 Dartmouth (Earl of), Howe *v.* 359
 Darville *v.* Terry, 183
 Davenport, Farral *v.* 448
 Davey, Attorney-General *v.* 278
 Millett *v.* 514
 Davidson, Quayle *v.* 233
 Davies *v.* Davies, 76, 147, 149
 McHenry *v.* 856
 v. Nicolson, 488
 Davis, Hitch *v.* 220
 Daw *v.* Terrell, 592
 Dawson *v.* Bank of Whitehaven, 555
 Berdoe *v.* 149
 v. Dawson, 708
 Row *v.* 435
 Day, Cowdry *v.* 154
 v. Day, 436
 Day, Holmes *v.* 655
 Deacon, Pearl *v.* 655
 Deare *v.* Soutten, 904
 Dearsley, Swaisland *v.* 424
 Dederer, Yale *v.* 856
 De Hoghton *v.* Money, 431, 731
 De la Touche's Settlement, *In re*, 89
 Delbridge, Richards *v.* 230
 De Mattos, Worseley *v.* 247
 Dening *v.* Ware, 183, 421
 Denne *v.* Light, 424
 Denny *v.* Hancock, 424, 425
 Dent, Wilkinson *v.* 681
 Denton *v.* Donor, 161
 Salisbury *v.* 284
 Dering *v.* Winchelsea (Earl of), 633
 Devaynes *v.* Noble, 464
 v. Robinson, 371
 Devoy *v.* Devoy, 313
 Dewey *v.* Allen, 345
 Dewitt, Hallenback *v.* 123
 De Witte *v.* Palin, 805.
- D'Eyncourt *v.* Gregory, See INDEX, HEIRLOOMS.
 Dick, Kimberley *v.* 443, 454
 Dilkes *v.* Broadmead, 487
 Dillwyn *v.* Llewelyn, 731
 Dilrow *v.* Bone, 421
 Dimmock *v.* Hallett, 424
 Dimsdale *v.* Dimsdale, 125, 149
 Diplock *v.* Hammond, 435
 Dipple *v.* Corles, 230
 Di Sora *v.* Philipps, 58
 Dixie *v.* Wright, 409
 Dixon, Lamare *v.* 427
 Mangles *v.* 439
 v. Muckleston, 592, 593
 v. Peacock, 323, 628
 Dobson, Harshaw *v.* 131
 Racey *v.* 160
 Dobson, Stocks *v.* 437
 Doe *d.* Hiscocks *v.* Hiscocks, 100
 Dolan *v.* Macdermot, 275
 Dolphin *v.* Aylward, 193
 Donaldson *v.* Donaldson, 421
 Doncaster *v.* Doncaster, 236
 Donner, Denton *v.* 161
 Douglas *v.* Culverwell, 124
 Mackay *v.* 184
 Dowle *v.* Saunders, 535
 Dowling *v.* Betjemann, 405
 Downes *v.* Jennings, 33, 182
 Drane *v.* Gunter, 567
 Drew *v.* Lockett, 655
 v. Martin, 313
 Drosier *v.* Brereton, 352
 Druiff *v.* Parker (Lord), 89
 Drury, Walker *v.* 882-4
 Drysdale, Nevin *v.* 708
 Dubois, Caspell *v.* 149
 Duffield, Cogan *v.* 89
 Duffy's Trust, *Re*, 879
 Dugdale *v.* Dugdale, 475
 Dumper *v.* Dumper, 313
 Duncombe *v.* Greenacre, 871, 872
 (No. 2), 883
 Dunkley *v.* Dunkley, 883
 Dunsany (Lady), Wilson *v.* 504
 Durfee *v.* Old Colony R. R., 777

- Durham (Earl of) *v.* Legard (Sir F.), 415
 Durston, Grosvenor *v.* 681
 Dyer *v.* Dyer, 311
- E.
- Eaden *v.* Firth, 770
 Eames, Lambe *v.* 233
 Easterbrook *v.* Tillinghast, 285
 Eastham, Willard *v.* 856
 Eastman, Van Vronker *v.* 518
 Eastwood, Coverdale *v.* 450
 Thomson *v.* 267
 Eaton *v.* Bennett, 91
 v. Watts, 233
 Eaton *v.* Whittaker, 448
 Eaves *v.* Hickson, 357
 Ede, Paget *v.* 54
 Eddels *v.* Johnson, 475
 Eddleston *v.* Collins, 574
 Edmondson, Clegg *v.* 33, 333
 Edmunds *v.* Low, 712
 Edwards, Hughes *v.* 33
 Edwards, Phillips *v.* 448
 Saunders *v.* 30, 236
 v. Trumbull, 592
 Egmont *v.* Darell, 753
 Elcock *v.* Mapp, 294
 Elibank (Lady) *v.* Montolieu,
 page 447, n.
 Elliot *v.* Merryman, 192, 257
 Ellis, Bouts *v.* 220
 Ellison *v.* Ellison, 193, 245
 Elsworth, Anderson *v.* 200
 Elwes *v.* Elwes, 90
 Emuss, Galton *v.* 178
 Engel, Curtis *v.* 856
 England, Bond *v.* 479
 Webb *v.* 405, 819
 Erwin, Parham *v.* 122
 Eapey *v.* Lake, 149
 Espin *v.* Pemberton, 535
 Essell *v.* Hayward, 640
 Etting *v.* Bank of the United
 States, 116
 Evans *v.* Bagshaw, 718
 v. Bremridge, 658
- Evans, *v.* Carrington, 898-900
 Rowlands *v.* 640
 Williams *v.* 447
 Everett, Smith *v.* 386
 Everitt *v.* Everitt, 733
 Eyden, Gibbins *v.* 475
 Eykyn's Trusts, 313
 Eyre, Cory *v.* 50, 529
 v. Shaftesbury (Countess
 of), 792
- F.
- Fabian, Nunn *v.* 447
 Fackerell, Bagster *v.* 300
 Fairer *v.* Park, 712
 Fane *v.* Fane, 87
 Fairfax, Agar *v.* 715
 Faithfull, In re, 616
 Falcke *v.* Gray, 405, 424
 Fane *v.* Fane, See INDEX, HEIR-
 LOOMS.
 Fardell, Baud *v.* 351
 Farnham *v.* Brooks, 162
 Farquharson *v.* Floyer, 475
 Farrall *v.* Davenport, 448
 Farrall, Jones *v.* 435
 Fenwick *v.* Clarke, 355
 v. Potts, 592
 Fergusson, Clark *v.* 771
 Fewkes, Barrs *v.* 233
 Field *v.* Peckett (No. 3), 402
 Fielder, Laver *v.* 33, 449, 450
 Finch, Colyer *v.* 34, 535
 v. Shaw, 535
 Thompson *v.* 366
 Firth, Eaden *v.* 770
 Fish *v.* French, 725
 Fishar, Harman *v.* 247
 Fisher *v.* Baldwin, 661
 Fitzgerald *v.* Chapman, 900
 Fitzsimons *v.* Fitzsimons, 681
 Fleming *v.* Buchanan, 475
 Fletcher *v.* Ashburner, 47, 409
 v. Fletcher, 421
 Floyer, Bostock *v.* 357
 Farquharson *v.* 475
 Flowers, Stewart *v.* 616

- Fluker v. Taylor, 454
 Fooks, Strange v. 33, 164, 655
 Forbes, Firth v. 614
 Ford, Re, 882
 Barnard v. 875
 v. Olden, 553
 Ford, Stockton v. 154
 v. White, 598
 Forster, Honywood v. (No. 2), 681
 Fossick, Ogden v. 424
 Foster, Haven v. 85
 Foster and Lister, In re, 197
 McCreight v. 407
 v. Roberts, 169
 Shaw v. 407
 Fowkes, Wilkinson v. 39
 Fowler v. Fowler, 89
 Marshall v. 883
 Fowler's Trust, In re, 681
 Fox v. Fox, 233
 v. Mackreth, 333
 Foxcroft, Lester v. 447
 Foy, Sharpe v. 190, 903
 Francis v. Brooking, 883
 v. Clemow, 304
 v. Francis, 616
 Viner v. 210
 Frankel, Garrard v. 89
 Franklin, Clarke v. 299
 Frazer, Norris v. 234
 Freeman v. Lomas, 663
 v. Pope, 183
 French, Fish v. 725
 Rost v. 133
 Shee v. 183, 469
 Friend, Pembroke v. 482
 Firth v. Forbes, 614
 Frost v. Belmont, 142
 Fryer, Hensman v. 475
 Fullerton v. Martin, 236
 Fynney, Piercy v. 662
 Fytche v. Fytche, 697
- G.
- Gaby, Stump v. 155
 Gaffee, In re, 852
- Gaines et ux. v. Chew et al., 105
 Gale, Cowles v. 413
 v. Gale, 422
 Gallagher, Johnson v. 856
 Galton v. Emuss, 178
 Gandell, Rodick v. 435
 Gardner v. Gardner, 855
 Ware v. 183
 Garnett, McCormack v. 883, 890
 Garrard v. Frankel, 89
 Garrick, Burdick v. 462
 Garth v. Cotton, 319
 v. Townsend, 79
 Gatcombe, Cowell v. 356
 Gay, Wadhams v. 31
 Geach, Clemow v. 34
 Geary, Union Bank of Georgetown v. 88
 Geaves, Cavendish v. 661
 Geldard, Robinson v. 496
 Gellatly, Brown v. 359
 Gent v. Harris, 883
 Gerken's Estate, 477
 Giacometti v. Prodggers, 871
 Gibbins v. Eyden, 475
 v. Taylor, 366
 Gibbs v. Daniel, 154
 v. Harding, 896
 Sharshaw v. 628
 Gibson v. Crehore, 558
 v. Goldsmid, 39
 Harrison v. 33
 Lake v. 35
 v. Seagrim, 493
 Gilbard, Gynn v. 801
 Gilbert v. Lewis, 830
 v. Overton, 421
 Gilbertson v. Gilbertson, 477
 Gill v. Schley, 133
 Gillian v. Brown, 712
 Gilliat v. Gilliat, page 484, n.
 Gilmore, Huntington v. 220
 Gill's Estate, 710
 Girod, Michoud v. 545
 Gleaves v. Paine, 882
 Glengall (Earl of), Thynne (Lady E.) v. 447, 704

- Glenn, McNeal *v.* 247
 Glenorchy (Lord) *v.* Bosville, 80
 89, 236
 Glover, *Re*, 230
 Glyn, Harding *v.* 79, 233, 283
 Goddard *v.* Whyte, 655
 Godlee, Reynolds *v.* 298
 Goff, Wright *v.* 89
 Goldingham, Dance *v.* 377
 Goldsmid, Gibson *v.* 39
 Goldwin, Chambers *v.* 804
 Goldwire, Legg *v.* 89
 Goodwin, Brittlebank *v.* 462
 Goodyear, Murrell *v.* 205
 Gott, Allen *v.* 477
 Heptinstall *v.* 301
 Goulder *v.* Camm, 830
 Graeme *v.* Cullen, 567
 Graham, *In re*, 801
 Croft *v.* 168
 v. Johnson, 153
 v. Wickman (No. 1),
 714
 Grane, White *v.* 806
 Grant *v.* Grant, 230, 421, 824
 Wynch *v.* 374
 Gratz, Brashier *v.* 413
 Prevost *v.* 33
 Graves *v.* Boston Marine In-
 surance Co., 89
 Gray, Baker *v.* 530
 Falcke *v.* 405, 424
 Richmond *v.* 424
 v. Russell, 774
 Green, Bethell *v.* 475
 v. Britten, 830
 v. Darling, 661
 v. Marsden, 233
 v. Wynn, 164
 Greenacre, Duncombe *v.* 871, 872
 (No. 2), 883
 Greenhill, Attorney-General *v.*
 285
 Willes *v.* (No. 1, 2),
 436
 Greenslade *v.* Dare, 34
 Greenwich Tanning Company,
 Reeves *v.* 424
- Greenwood *v.* Greenwood, 88,
 125
 Middleton *v.* 668
 Gregory, D'Eyncourt *v.* See IN-
 DEX, HEIRLOOMS
 Jones *v.* 105
 v. Wilson, 676
 Gregson, Cook *v.* 469
 Grenfel, Paget *v.* 704
 Gresley *v.* Mousley, 33, 154
 Greville *v.* Browne, 304
 Grice, Cosnahan *v.* 223
 Griffiths *v.* Porter, 356
 Grindle, Blaiklock *v.* 686
 Grissell *v.* Swinhoe, 681
 Grogan, McCormick *v.* 233, 234
 Grosvenor *v.* Durston, 681
 v. Sherratt, 175
 Grove's Trust, *Re*, 883
 Grymes *v.* Sanders, 84
 Guedalla, Mendes *v.* 356
 Montefiore *v.* 708
 Guest, Harrison *v.* 122, 123
 Gully *v.* Cregoe, 233
 Gummow, Budge *v.* 352
 Gunter, Drane *v.* 567
 Gutteridge, Phillips *v.* 589
 Gye, Knox *v.* 461
 Gynn *v.* Gilbard, 801
- H.
- Hackett, Stone *v.* 421
 Haddon, Seycraft *v.* 856
 Haigh *v.* Kay, 179
 Haight *v.* Moore, 149
 Hall, Airey *v.* 421
 v. Hall, 200
 Rossiter *v.* 776
 Hallenback *v.* Dewitt, 123
 Hallett, Dimmock *v.* 424
 Hamilton *v.* Buckmaster, 424
 Hammond, Allen *v.* 87
 Diplock *v.* 435
 v. Smith, 712
 Hanbury, Parkinson *v.* 514, 515,
 543, 545

- Hance v. Truwhitt, 683
 Hancock, Denny v. 424, 425
 Hannah v. Hodgson, 149
 Harbin v. Darby (No. 1), 345
 Harby, Commissioners of Public Works v. 177
 Harcourt, Jenkinson v. 479
 v. White, 33
 Hardaker, Stead v. 475
 Hardenburg, Texas v. 50
 Harding, Gibbs v. 896
 v. Glynn, 79, 233, 283
 St. Albyn v. 169
 Harman v. Fishar, 247
 Harms v. Parsons, 141
 Harris, Atlantic Bank v. 187
 v. Brooks, 164
 Gent v. 883
 v. Harris (No. 1), 396
 v. Mott, 848
 v. Pepperell, 89
 v. Watkins, 302, 304
 Harrison, Alton v. 183
 Buchanan v. 295, 300
 v. Guest, 122, 123
 v. Gibson, 33
 v. Harrison, 294
 Miles v. 496
 v. Randall, 391
 Rooper v. 535
 v. Tennant, 640
 Harshaw v. Dobson, 131
 Hart, Rolland v. 190
 v. Tribe (No. 4), 233
 Hartland v. Murrell, 302
 Hartley, Barrett v. 345, 365
 Hartridge, Dady v. 475
 Harvey, Millard v. 901
 Haselfoot's Estate, In re, Chauntler's Claim, 604
 Hassell v. Hawkins, 712
 Hastings, Ex parte, Bubb v. Yelverton, 768
 Haven v. Foster, 85
 Hawkes v. Hubback, 852
 Hawkins, Hassell v. 712
 Hay, Heald v. 429
 Hayden v. Kirkpatrick, 588
 Haygarth v. Wearing, 112a
 Haymes, Brooke v. 89
 v. Cooper, 617
 Hayward, Essell v. 640
 Headland, Williams v. 383
 Heald v. Hay, 429
 Heap, Schofield v. 708
 Hearn, Woolam v. 449
 Heath v. Crealock, 34
 Loxley v. 450
 Heather v. O'Neil, 574
 Hellicar, Powell v. 220
 Henderson, Chartered Bank of India, etc., v. 439
 v. Comptoir d'Escompte de Paris, 439
 Hendrie, Palmer v. 549
 Hendrickson v. Hinckley, 661
 Henniker, Wythe v. 498
 Hensman v. Fryer, 475
 Henty, Caballero v. 424
 Heptinstall v. Gott, 301
 Hepworth v. Hepworth, 313
 Herbert, Sinnett v. 276
 Hewison v. Negus, 107, 823
 Hewitt v. Kaye, 220
 Webb v. 164, 657
 Heyl, Wainford v. 856
 Hickman v. Cook, 720
 Hickson, Eaves v. 357
 Higgins, Morgan v. 156
 v. Samels, 424
 Hill v. Boyle, 431
 Hillman, Lewis v. 154
 Hilton, Clarke v. 301
 v. Woods, 430
 Hinckley, Hendrickson v. 661
 Hind's Lessee v. Longworth, 183
 Hine, Picard v. 856
 Hingston, Parnell v. 421
 Hiscocks (Doe d.) v. Hiscocks, 100
 Hitch v. Davis, 220
 Hitchcock v. Clendinen, 890
 Hitchman v. Stewart, 635
 Hives, Adsetts v. 133

XXXV

Hobday v. Peters (No. 1), 583
(No. 2), 857
Hoddel v. Pugh, 411
Hodge, Tynte v. 169
Hodgson v. Bibby, 33
Hannah v. 149
Lister v. 102
Marine Insurance Co.
of Alexandria, v. 762
Hoghton v. Hoghton, 149
Holcombe, Story v. 774
Holl, Perry v. 190
Holland v. Holland, 374
Holden v. Stickney, 567
Holloway v. Radcliffe, 409
Holman v. Loynes, 154
Holmes v. Penny, 183
Swan v. 681
v. Day, 655
Holmes's Estate, Re, 155
Holmesdale (Viscount), Sack-
ville-West v. 237
Holroyd v. Marshall, 436
Holtby, Bell v. 424
Homans, Morgan v. 345
Home, Lyon v. 200
Honywood v. Forster (No. 2),
681
Hood v. Oglander, 233
Hooper, Bate v. 359
v. Smart, 415
Turnley v. 183
Hope v. Hope, 57
Hopgood v. Parkin, 257
Hopkinson, Rolt v. 530
Hopwood v. Hopwood, 708
Horsley v. Cox, 32
Horton v. Brocklehurst (No. 2),
366
Hotten v. Arthur, 774
Houlston, Jarrold v. 774
Howard, etc., Ass'n., Shannon v.
674
Waters v. 681
Howe v. Dartmouth (Earl of),
359
Howell, United States v. 164
Pankhurst v. 710
Howell, Wheeler v. 304
Howells v. Jenkins, 681
Howlett, Lee v. 535
Hubback, Hawkes v. 852
Hubbard, Boynton v. 136
v. Shaw, 514
Hudson, Phillips v. 749
v. Temple, 413
Thompson v. 518, 547,
558, 674, 678
Hughes v. Edwards, 33
v. Jones, 415
Sayre v. 313
Voyle v. 421
Huguenin v. Baseley, 148, 200
Hull v. Sherwood, 655
Hulme v. Tenant, page 423, n.
Humphreys, Richards v. 710
Hunt v. Hunt, 896
Moultrie v. 504
v. Rousmaniere, 83
Hunter v. Belcher, 460
v. Walters, 114, 115, 133
Huntingdon (Earl of) v. Hun-
tingdon (Countess of), 320, 574
Huntington v. Gilmore, 220
Hurst, Padwick v. 454
Smith v. 248
Hutchinson, Bold v. 95
Metcalf v. 310
Hutt, Broughton v. 81
Hutton v. Rossiter, 112 a
I.
Iggulden, Lancefield v. 475
Iliffe, Smith v. 89
Illingworth, Leyland v. 424
Imperial Mercantile Credit As-
sociation v. Coleman, 333
Ingham, Rogers v. 83
Ingilby, Campbell v. 67
Inman v. Inman, 536
Inns, Benwell v. 141
Inskip, Braybrooke v. 585
Insole, In re, 832
Ion v. Ashton, 477, 480

Iremonger, Barnwell *v.* 475
 Irvine *v.* Sullivan, 234

J.

Jackson, Biddle *v.* 816
 v. Croy, 123
 Lane *v.* 34
 v. Pease, 475
 Pease *v.* 187, 530, 580,
 582
 Sinclair *v.* 31
 Tiernan *v.* 435
 Tyson *v.* 431
 Jacques, Methodist Episcopal
 Church *v.* 848
 Jacobs *v.* Rylance, 375
 Jaeger, Moore *v.* 54
 James *v.* James, 601
 v. Lichfield, 190
 Janssen, Chesterfield (Earl of)
 v. 165
 Jarratt *v.* Aldam, 147
 Jarrold *v.* Houlston, 774
 Jarvis, Shillibeer *v.* 448
 Jauncey *v.* Attorney-General,
 496
 Jeaffreson, Ogilvie *v.* 34, 112,
 190
 Jeans *v.* Cooke, 314
 Jefferies *v.* Mitchell, 712
 Jegon *v.* Vivian, 749
 Jenkins, Ayerst *v.* 732
 Howells *v.* 681
 v. Jones, 541
 v. Pye, 149
 v. Stetson, 169
 Jenkinson *v.* Harcourt, 479
 Jenner *v.* Morris, 661
 Jennings *v.* Baddeley, 640
 v. Broughton, 112
 Charlesworth *v.* 112a
 Downes *v.* 33, 182
 Jersey (Countess of), Stackhouse
 v. 50
 Jervis *v.* Wolferstan, 392a, 393
 Jervoise *v.* Jervoise, 828

Joel, Cooper *v.* 725
 Johnson, Comstock *v.* 39
 Eddels *v.* 475
 v. Gallagher, 856
 Graham *v.* 153
 Kellaway *v.* 372
 Park *v.* 424
 v. Wyatt, 668
 Johnston, Kay *v.* 323
 Jones, Briggs *v.* 535
 v. Cowperthwaite, 856
 v. Farrell, 435
 v. Gregory, 105
 Hughes *v.* 415
 Jenkins *v.* 541
 v. Lock, 421
 Nicholl *v.* 902
 Ravenscroft *v.* 709
 v. Ricketts, 169
 Rogers *v.* 681
 v. Thomas, 740
 Walker *v.* 580
 Judge, Tomson *v.* 154, 155
 Judson *v.* Corcoran, 435

K.

Kane *v.* Bloodgood, 33
 Kay *v.* Johnston, 323
 v. Smith, 112
 Kay, Smith *v.* 153
 Kaye, Haigh *v.* 179
 Hewitt *v.* 220
 Keane *v.* Robarts, 370
 Keech *v.* Sanford, 333
 Keep, Beech *v.* 421
 Keith *v.* Burrows, 53
 Kekewich *v.* Manning, 421
 Kellaway *v.* Johnson, 372
 Kellett, Russell *v.* 276
 Kelson *v.* Kelson, 193
 Kemp *v.* Burn, 400
 Philanthropic Society *v.*
 496
 Kempson *v.* Ashbee, 149, 150
 Kempton, Burnham *v.* 770
 Kennard *v.* Kennard, 79

- Kennedy, Broun *v.* 93, 148, 153
 v. Parke, 436
 Kenny *v.* Udall, 814
 Kensington (Lord) *v.* Bouverie,
 629
 Rooke *v.* 90
 Kent *v.* Riley, 183
 Kerr's Policy, In re, 600
 Kerry, Phillipson *v.* 93, 102, 200
 Kilvert's Trusts, In re, 275
 Kimber *v.* Barber, 160
 Kimberley *v.* Dick, 443, 454
 Kincaid's Trusts, In re, 871, 883
 King, Savory *v.* 149, 154
 Kinnear, Bonser *v.* 233
 Kirkpatrick, Hayden *v.* 588
 United States *v.*
 464
 Kirkwood *v.* Thompson, 545, 555
 Klinck *v.* Price, 506
 Knight *v.* Knight, 888
 Seagram *v.* 33
 Knott, Perry *v.* 371, 372
 Knox *v.* Gye, 461
 Koeber *v.* Sturgis, 883
- L.
- Lacon *v.* Allen, 592
 Lacy, Tinsley *v.* 775
 Lagow, Neilson *v.* 316
 Laing, Tucker *v.* 164
 Lake *v.* Craddock, 315
 Espey *v.* 149
 Lake *v.* Gibson, 35
 Lamare *v.* Dickson, 427
 Lambarde *v.* Older, 663
 Lambe *v.* Eames, 233
 v. Orton, 421
 Lambert, Merritt *v.* 430
 v. Thwaites, 284
 Lamotte, Cooke *v.* 200
 Lamprell, Trutch *v.* 366
 Lancaster and Carlisle Railway
 Company *v.* Northwestern
 Railway Company, 777
 Lancefield *v.* Iggulden, 475
- Lane *v.* Jackson, 34
 Perfect *v.* 169
 Langdale (Lady) *v.* Briggs, 479
 Langdon *v.* Astor's Ex'rs., 704
 Larcher, Bright *v.* 477
 (No. 2), 33, 476
 Larios *v.* Bonany y Gurety, 451
 Larkin *v.* Mann, 477
 Lathrop *v.* Amherst Bank, 430
 Laver *v.* Fielder, 33, 449, 450
 Law, Sloo *v.* 365
 Lawless, Parfit *v.* 148
 Lawrance, Brownson *v.* 475
 Layard *v.* Maud, 535
 Leach, Brown *v.* 112
 Clark *v.* 639
 Sharp *v.* 148, 169, 200
 Leary *v.* Shout, 640
 Leather Cloth Company *v.* Lor-
 sont, 141
 Lechmere *v.* Brotheridge, 848,
 850
 Le Clair, May *v.* 336
 Ledger, Longmate *v.* 123, 124,
 130
 Lee *v.* Howlett, 535
 v. Sankey, 367
 Leeds Banking Company, In re,
 856
 Legard (Sir F.), Durham (Earl
 of) *v.* 415
 Legerton, Bright *v.* 33
 Legg *v.* Goldwire, 89
 Lehmann *v.* McArthur, 33
 Leicester (Corporation of), At-
 torney-General *v.* 372
 Leigh *v.* Lloyd, 190
 Leighton *v.* Leighton, 709
 Le Marchant *v.* Le Marchant,
 233
 Lemprière, London Chartered
 Bank of Australia *v.* 856-8
 Le Neve *v.* Le Neve, 187
 Le Roy, Watson *v.* 34
 Leslie, Craig *v.* 47, 295, 301, 409
 Lester *v.* Foxcroft, 447
 L'Estrange *v.* L'Estrange, 435
 Lett *v.* Morris, 435

- Letts, Turner *v.* 616
 Levau, Smith *v.* 454
 Lewis *v.* Darling, 57
 Gilbert *v.* 830
 v. Hillman, 154
 v. Matthews, 830
 New England Bank *v.* 250
 O'Brien *v.* 155
 v. Rees, 193
 Ley, Price *v.* 102
 Leyland *v.* Illingworth, 424
 Liebarrow *v.* Mason, 133
 Lichfield, James *v.* 190
 Life Association of Scotland *v.*
 Siddal, 871
 Light, Denne *v.* 424
 Lightfoot, Menzies *v.* 530
 Lilford (Lord) *v.* Powys Keck,
 498
 Lincoln *v.* Wright, 179
 Lindgren, Wilkinson *v.* 275
 Lindsay, Codrington *v.* 689
 Lister, Foster and In re, 197
 v. Hodgson, 102
 Tidd *v.* 495, 891
 Liverpool Borough Bank *v.* Tur-
 ner, 609
 Marine Credit Com-
 pany *v.* Wilson, 608
 Living, Carr *v.* (No. 2), 808
 Llewelyn, Dillwyn *v.* 731
 Lloyd *v.* Attwood, 193
 v. Banks, 436
 Leigh *v.* 190
 v. Pughe, 825
 Wentworth *v.* 33, 160
 Wilson *v.* 164
 Lock, Jones *v.* 421
 Lockett, Drew *v.* 655
 Locking *v.* Parker, 567
 Lockwood, Scholefield *v.* (No. 1),
 575
 (No. 2),
 89
 (No. 3),
 558
 Lodge *v.* Prichard, 649
 Loffus *v.* Maw, 450
- Lomas, Freeman *v.* 663
 Londesborough (Lord) *v.* Somer-
 ville, 310
 London Chartered Bank of Aus-
 tralia *v.* Lemprière,
 856-8
 Hospital (Governors of),
 Robinson *v.* 295
 Long *v.* Bowring, 453
 Longmate *v.* Ledger, 123, 124,
 130
 Longworth, Hind's Lessee *v.* 183
 Taylor *v.* 413, 424
 Lonsdale, Prideau *v.* 182
 Loomis *v.* Loomis, 436
 Lord, Luff *v.* 365
 Milroy *v.* 421
 Lorsont, Leather Cloth Com-
 pany *v.* 141
 Loughborough, Barfield *v.* 646
 Lovett *v.* Lovett, 754
 Low, Edmunds *v.* 712
 Loxley *v.* Heath, 450
 Loynes, Holman *v.* 154
 Luck, Beevor *v.* 554
 Lucy's Case, 88
 Luff *v.* Lord, 365
 Lush's Trusts, In re, 887
 Lyddon *v.* Moss, 155
 Lyman, Parsons *v.* 504
 v. United Ins. Co., 89
 Lynn, Bank of Alexandria *v.* 424
 Lyon *v.* Home, 200
 Watson *v.* 616
 Lyons (Mayor of) *v.* Advocate-
 General of Bengal, 276
 Lytton, Bennett *v.* 383
- M.
- McArthur, Lehman *v.* 33
 McAvoy, Stock *v.* 313
 McBean, Collier *v.* 424
 McCarogher *v.* Whieldon, 704,
 707
 McCormick *v.* Garnett, 883, 890
 v. Grogan, 233, 234

- McCreight v. Foster**, 407
Macdermot, Dolan v. 275
Macdonald, Cooper v. 708
McDonnell v. White, 33
McGowan v. Remington, 791
McHenry v. Davies, 856
McIntosh v. Saunders, 89
McKnight v. Taylor, 33
Mackay, Bently v. 81
 v. Douglas, 184
Mackett v. Mackett, 233
Mackreth, Fox v. 333
 v. Symmons, 327
McLaughlin v. Bank of Potomac,
 183
McLean, Telegraph Despatch,
 etc., Company v. 424
 Newton v. 34
McNeal v. Glenn, 247
Macleod v. Annesley, 352
Macnab v. Whitbread, 233
Magawley's Trust, Re, 183
Magdalen College v. Attorney-
 General, 278
Maidstone (Lord), Wright v. 76
Major, Beecher v. 313
Malcolm v. Scott, 435
Malins v. Brown, 448
Malleson, Morgan v. 230
Malmesbury (Earl of) v. Malmes-
 bury (Countess of), 89
Malpas, Clark v. 123
Manby v. Bewicke, 128
Mandeville v. Welch, 435, 592
Mangles v. Dixon, 439
Mann, Child v. 744
Mann, Larkin v. 477
Manning, Kekewich v. 421
Manningford v. Toleman, 316
Mapp, Elcock v. 294
Mare v. Sanford, 186
Marine Ins. Co. of Alexandria
 v. Hodgson, 762
Marsden, Green v. 233
Marsden's Trust, Re, 203
Marshall v. Balto. and Ohio
 R. R., 142
 v. Fowler, 883
Marshall, Holroyd v. 436
 Watson v. 883, 884
Marshfield, Talbot v. 401
Martin, Drew v. 313
 Fullerton v. 236
 v. Martin, 804
Mason, Liebarrow v. 133
Massie v. Watts, 54
Masson, Stevenson v. 708
Mathews, Lewis v. 830
Maud, Layard v. 535
Maude, Scales v. 421
Maule, Crawshay v. 637
Maw, Loffus v. 450
Maxfield v. Burton, 187, 190
Maxwell, Wells v. (No. 1), 413
May, Croxton v. 883
May v. Le Claire, 336
Mayor, Sharp v. 112 a
Meacham v. Sterne, 345
Meadows v. Meadows, 89
Meads, Taylor v. 849
Mellor, Stead v. 233
Melton, Ranelagh (Lord) v. 413
Mendes v. Guedalla, 356
Menzies v. Lightfoot, 530
Merchant Taylor's Company v.
 Attorney-General, 277
Merrett, Powell v. 294
Merriman v. Ward, 464
Merritt v. Lambert, 430
Merryman, Elliot v. 192, 257
Metcalfe v. Hutchinson, 310
Metcalfe's Trusts, Re, 131, n.
Methodist Episcopal Church v.
 Jacques, 848
Metropolitan Board of Works,
 Buccleuch (Duke of) v. 440
Michell, Jefferies v. 712
Michoud v. Girod, 545
Micklethwait v. Micklethwait,
 767
 Walker v. 59
Middleton v. Greenwood, 668
 v. Pollock, 663
 v. Windross, 681
Mildred v. Austin, 555
Miles v. Harrison, 496

- Millard *v.* Harvey, 901
 Miller *v.* Cook, 40, 168, 170
 v. Miller, 131
 v. Thurgood, 681, 682
 Millett *v.* Davey, 514
 Mills *v.* Mills, 142
 Milne, Wild *v.* 644
 Milroy *v.* Lord, 421
 Milwaukee R. R. Co. *v.* same, 431
 Minshall, Bernard *v.* 235
 Miss. and Mo. R. R. *v.* Ward, 770
 Mitchell *v.* Mitchell, 475
 Cram *v.* 162
 Money, De Hoghton *v.* 431, 731
 v. Money, 815
 Monk, Baker *v.* 123, 124
 Montefiore *v.* Guedalla, 708
 Montolieu, Elibank (Lady) *v.* page 447, n.
 Moore, Blandheir *v.* 785
 Haight *v.* 149
 v. Jaeger, 54
 v. Moore, 220, 230
 v. Morris, 847, 851, 852
 v. Petchell, 474
 Mordaunt, Noys *v.* 681
 Morgan *v.* Higgins, 156
 v. Homans, 345
 v. Malleson, 230
 Morgan, Spread *v.* 692, 693
 Walters *v.* 118, 424
 Morley *v.* Morley, 626
 Morris, Aylesford (Earl of) *v.* 168, 171
 Jenner *v.* 661
 Lett *v.* 435
 Moore *v.* 847, 851, 852
 Morse's Settlement, In re, 89
 Mortimer *v.* Bell, 424
 Payne *v.* 423, 492
 Mosely *v.* Simpson, 441, 442
 Mosley *v.* Ward, 689
 Moss *v.* Bainbrigge, 155
 Lyddon *v.* 155
 Mostyn (Lord), Brooke *v.* 88
 v. Mostyn, 89, 100
 Mostyn, Townshend *v.* 479, 480
 v. West Mostyn Com-
 pany, 117
 Mott, Harris *v.* 848
 Mould, Penfold *v.* 885
 Moultrie *v.* Hunt, 504
 Mount, Biron *v.* 250
 Mousley, Gresley *v.* 33, 154
 Moxon *v.* Paine, 88, 108, 148
 Muckleston, Dixon *v.* 592, 593
 Mullings, Phillips *v.* 200
 v. Trinder, 424
 Mumford *v.* Stohwasser, 529
 Munch *v.* Cockerell, 371
 Mundford, Alston *v.* 493
 Murphy, Paterson *v.* 230
 Steele *v.* 250
 Murray *v.* Parker, 89, 96
 Murrell *v.* Goodyear, 205
 Hartland *v.* 302
 Murrill *v.* Neill, 649
 Mutlow *v.* Mutlow, 469
 Myers *v.* United Guarantee Com-
 pany, 431

N.

 Nanney *v.* Williams, 155
 Napier *v.* Napier, 883
 National Provincial Bank, Ex
 parte, In re Bolter, 89
 Negus, Hewison *v.* 197, 823
 Neill, Murrill *v.* 649
 Neilson *v.* Lagow, 316
 Nelson *v.* Stocker, 112
 Nesbitt *v.* Berridge, 169
 Neve *v.* Pennell, 554
 Nevin *v.* Drysdale, 708
 Newbery, In re, 796
 New England Bank *v.* Lewis,
 250
 Newell, Palmer *v.* 714
 Newman, In re, 156
 v. Selfe, 542
 v. Wilson (No. 2), 883
 Newstead, Ridgway *v.* 33
 Newton *v.* Chorlton, 655

Newton, McLean *v.* 34
 v. Newton, 599
 v. Sherry, 384
 Nicholl *v.* Jones, 902
 Nickolson, Upperton *v.* 424
 Nicolson, Davies *v.* 488
 Nightingale, Parker *v.* 204
 Noble, Devaynes *v.* 464
 Norfolk, Peabody *v.* 141
 Norris *v.* Frazer, 234
 Robertson *v.* 33, 541
 Wooldridge *v.* 164
 Northampton, etc., Railway
 Company, Wilson *v.* 405
 Northern Assam Tea Company,
 In re, Ex parte Universal Life
 Assurance Company, 439
 North Metropolitan Railway
 Company, Steele *v.* 777
 Northwestern Railway Com-
 pany, Lancaster and Carlisle
 Railway Company *v.* 777
 Northwestern Railway Com-
 pany, Shrewsbury and Bir-
 mingham Railway Company
 v. 424
 Norton *v.* Norton, 316
 Nosworthy, Basset *v.* 34, 338,
 376
 Nottidge *v.* Prince, 130, 153
 Noys *v.* Mordaunt, 681
 Nunn *v.* Fabian, 447
 Nye, Turner *v.* 228

O.

Oakes *v.* Turquand, 113
 Obee *v.* Bishop, 462
 O'Brien *v.* Lewis, 155
 Ochsenbein *v.* Papelier, 54
 Oelrichs *v.* Spain, 12
 Ogden *v.* Fossick, 424
 Ogilvie *v.* Jeaffreson, 34, 112, 190
 Oglander, Hood *v.* 233
 O'Grady, Smith *v.* 463
 Okeson's Appeal, 477

Old Colony R. R., Durfee *v.* 777
 Olden, Ford *v.* 553
 Older, Lambarde *v.* 663
 Oliveira, Beaumont *v.* 496
 Ollive, Weale *v.* 421
 O'Neill, Heather *v.* 574
 Onions *v.* Cohen, 725
 Oppenheim, Bury *v.* 149
 Ordish, Wood *v.* 475
 Oriental Commercial Bank *v.*
 Savin, In re Bird,
 357
 Financial Corporation
 v. Overend and Com-
 pany, 164
 Ormes *v.* Beadel, 424, 441
 Orrell *v.* Orrell, 685
 Orton, Lambe *v.* 421
 Otis *v.* Beckwith, 421
 Overend and Company, Oriental
 Financial Corporation *v.* 164
 Overton, Gilbert *v.* 421
 Owen, Cradock *v.* 294
 Thorp *v.* 233

P.

Padget, Vint *v.* 554
 Padwick *v.* Hurst, 454
 Page *v.* Cox, 232
 Paget *v.* Ede, 54
 v. Grenfell, 704
 Pain *v.* Coombs, 448
 Paine, Gleaves *v.* 882
 Palin, De Witte *v.* 805
 Palmer *v.* Hendrie, 549
 v. Newell, 714
 Vanderberg *v.* 230
 Pankhurst *v.* Howell, 710
 Papelier, Ochsenbein *v.* 54
 Parfitt *v.* Lawless, 148
 Parham, Erwin *v.* 122
 Park, Fairer *v.* 712
 v. Johnson, 424
 Kennedy *v.* 436
 Parker *v.* Barker, 744

- Parker v. Clarke**, 581
 v. Coburn, 712
 (*Lord*), *Druiff v.* 89
 Locking v. 567
 Murray v. 89, 96
 v. Nightingale, 204
 Smith v. 439
Parkin, Hopgood v. 357
 Surtees v. 494
 v. Thorold, 413
Parkinson v. Hanbury, 514, 515,
 543, 545
Parkis, Craig v. 436
Parnell v. Hingston, 421
Parry, Phillips v. 475
Parsons, Harms v. 141
 v. Lyman, 504
Paterson v. Murphy, 230
 v. Scott, 494
Payne v. Mortimer, 423, 492
 Moxon v. 88, 108, 148
Peabody v. Norfolk, 141
Peachy v. Somerset (Duke of),
 453, 670
Peacock, Dixon v. 323, 628
Pearce, Rolls v. 220
Pearl v. Deacon, 655
Pearmain v. Twiss, 475
Pearson v. Amicable Assurance
 Office, 421
 v. Benson, 154
 Spencer v. 529
Pease v. Jackson, 187, 530, 580
 582
 Jackson v. 475
Peckett, Field v. No. 3, 402
Peckham v. Taylor, 228, 230
Pegler v. White, 424
Pemberton, Espin v. 535
Pembroke v. Friend, 482
Penfould v. Mould, 885
Penn v. Baltimore (Lord), 54
Pennell, Neve v. 554
Penney, Holmes v. 183
Penny, Briggs v. 233, 235, 287
Pepperell, Harris v. 89
Pepper's Will, 31, 79
Perfect v. Lane, 169
Perry v. Holl, 190
 v. Knott, 371, 372
 v. Pratt, 720
Persee v. Persee, 125
Petchell, Moore v. 474
Peter v. Beverly, 47
Peters, Hobday v. (No. 1), 583
 (No. 2), 857
 Wheaton v. 774
 Usticke v. 681
Peterson v. Peterson, 473
Petit v. Shepherd, 725
Pett, Robinson v. 163, 333, 336,
 345
Phibbs, Cooper v. 87
Philanthropic Society v. Kemp,
 496
Phillipps, Di Sora v. 58
Phillips v. Beal (No. 2), 387
 v. Boardman, 204
 v. Edwards, 448
 v. Gutteridge, 589
 v. Hudson, 749
 v. Mullings, 200
 v. Parry, 475
 v. Phillips, 454, 708
Phillipson v. Kerry, 93, 102,
 200
Philpott v. St. George's Hos-
 pital, 277
Phipps v. Child, 661
Picard v. Hine, 856
Piercy v. Fynney, 662
Piggott v. Stratton, 204
Pilkington, Coles v. 447
Pileher v. Rawlins, 34, 190
Pinchin v. Simms, 704
Pincombe, Smith v. 88
Pinniger, Surcombe v. 448
Piper v. Piper, 482
Planet Benefit Building Society,
 Thompson v. 17
Pledge v. Buss, 655
Plenty v. West, 477
Plunkett, Buller v. 436
Pollard, Bone v. 313
Pollock, Middleton v. 663
Pomfret, Selby v. 554

Poole, *Ex parte*, 316
 Pooley *v.* Quilter, 162
 Pope, *Freeman v.* 183
 Porter *v.* Baddeley, 359
 Porter, *Griffiths v.* 356
 et al. v. Turner, 79
 Portington, *Taylor v.* 420
 Portland (Duke of), *Topham v.*
 201
 Pott *v.* Todhunter, 183
 Potter, *In re*, 817
 Potts, *Fenwick v.* 592
 v. Surr, 149
 Powell *v.* Hellicar, 220
 v. Merrett, 294
 v. Redfield, 678
 v. Riley, 475, 477
 v. Smith, 82, 426
 Powis, *Carpmael v.* 87
 Powys *v.* Blgrave, 763
 Powys Keck, *Lilford (Lord) v.*
 498
 Pratt, *Crompton v.* 464
 Perry v. 720
 Prees *v.* Coke, 158
 Presbyterian Church, *Voorhees*
 v. 160
 Presgrave, *Birkley v.* 636
 Prevost, *Gratz v.* 33
 Price, *Klinck v.* 506
 v. Ley, 102
 Prichard, *Lodge v.* 649
 Pride *v.* Bubb, 849
 Prideau *v.* Lonsdale, 182
 Prime, *Silk v.* 302, 304, 469
 Prince, *Nottidge v.* 130, 153
 Probst *v.* Brock, 539
 Progers, *Giacometti v.* 871
 Prole *v.* Soady, 326
 Pugh, *Hoddel v.* 411
 Pughe, *Lloyd v.* 825
 Pulsford *v.* Richards, 112, 112 a,
 116
 Pusey *v.* Pusey, *Somerset (Duke*
 of) v. Cookson, 791
 Pye, *Ex parte*, 698
 Jenkins v. 149
 Pyrke *v.* Waddingham, 424

Q.

Quayle *v.* Davidson, 233
 Queen, The, *Shropshire Union*
 Railways, etc., Company, v. 50,
 380, 529
 Queen's College, *Oxford, War-*
 wick v. 749
 Quilter, *Pooley v.* 162

R.

Racey, *Dobson v.* 160
 Radcliffe, *Holloway v.* 409
 Radford *v.* Willis, 424
 Ramshire *v.* Bolton, 112 a
 Randall, *Harrison v.* 391
 Ranelagh (Lord) *v.* Melton, 413
 Rankin *v.* Weguelin, 220
 Ravenscroft *v.* Jones, 709
 Rawlins, *Pilcher v.* 34, 190
 v. Wickham, 112 a, 640
 Rayment, *Scott v.* 638
 Read, *Baker v.* 33
 Re Cornwall, 183
 Re Kane, 806
 Re Paschall, 616
 Read *v.* Steadman, 294
 Redfield, *Powell v.* 678
 Rees *v.* Berrington, 164
 Lewis v. 193
 Reese River Silver Mining Com-
 pany *v.* Atwell,
 183
 v. Smith, 112 a, 146
 Reeves *v.* Baker, 233
 v. Greenwich Tanning
 Company, 424
 Rehden *v.* Wesley, 355
 Reid *v.* Reid, 284
 Remington, *McGowan v.* 791
 Rensselaer, *Wendell v.* 177
 Reynell *v.* Sprye, 112, 145, 430
 Reynolds *v.* Godlee, 298
 Rexford *v.* Rexford, 50
 Rhodes *v.* Bate, 148
 Cowgill v. 753
 Rice *v.* Rice, 50, 529

Q.

Quayle *v.* Davidson, 233
Queen, The, Shropshire Union
Railways, etc., Company, *v.* 50,
380, 529
Queen's College, Oxford, War-
wick *v.* 749
Quilter, Pooley *v.* 162

R.

Racey, Dobson v. 160
Radcliffe, Holloway v. 409
Radford v. Willis, 424
Ramshire v. Bolton, 112 a
Randall, Harrison v. 391
Ranelagh (Lord) v. Melton, 413
Rankin v. Weguelin, 220
Ravenscroft v. Jones, 709
Rawlins, Pilcher v. 34, 190
v. Wickham, 112 a, 640
Rayment, Scott v. 638
Read, Baker v. 33
Re Cornwall, 183
Re Kane, 806
Re Paschall, 616
Read v. Steadman, 294
Redfield, Powell v. 678
Rees v. Berrington, 164
Lewis v. 193
Reese River Silver Mining Com-
pany v. Atwell,
183
v. Smith, 112 a, 146
Reeves v. Baker, 233
v. Greenwich Tanning
Company, 424
Rehden v. Wesley, 355
Reid v. Reid, 284
Remington, McGowan v. 791
Rensellaer, Wendell v. 177
Reynell v. Sprye, 112, 145, 430
Reynolds v. Godlee, 298
Rexford v. Rexford, 50
Rhodes v. Bate, 148
Cowgill v. 753
Rice v. Rice, 50, 529

- Parker v. Clarke, 581
 v. Coburn, 712
 (Lord), Druiff v. 89
 Locking v. 567
 Murray v. 89, 96
 v. Nightingale, 204
 Smith v. 439
 Parkin, Hopgood v. 357
 Surtees v. 494
 v. Thorold, 413
 Parkinson v. Hanbury, 514, 515,
 543, 545
 Parkis, Craig v. 436
 Parnell v. Hingston, 421
 Parry, Phillips v. 475
 Parsons, Harms v. 141
 v. Lyman, 504
 Paterson v. Murphy, 230
 v. Scott, 494
 Payne v. Mortimer, 423, 492
 Moxon v. 88, 108, 148
 Peabody v. Norfolk, 141
 Peachy v. Somerset (Duke of),
 453, 670
 Peacock, Dixon v. 323, 628
 Pearce, Rolls v. 220
 Pearl v. Deacon, 655
 Pearmain v. Twiss, 475
 Pearson v. Amicable Assurance
 Office, 421
 v. Benson, 154
 Spencer v. 529
 Pease v. Jackson, 187, 530, 580
 582
 Jackson v. 475
 Peckett, Field v. (No. 3), 402
 Peckham v. Taylor, 228, 230
 Pegler v. White, 424
 Pemberton, Espin v. 535
 Pembroke v. Friend, 482
 Penfould v. Mould, 885
 Penn v. Baltimore (Lord), 54
 Pennell, Neve v. 554
 Penney, Holmes v. 183
 Penny, Briggs v. 233, 235, 287
 Pepperell, Harris v. 89
 Pepper's Will, 31, 79
 Perfect v. Lane, 169
 Perry v. Holl, 190
 v. Knott, 371, 372
 v. Pratt, 720
 Persee v. Persee, 125
 Petchell, Moore v. 474
 Peter v. Beverly, 47
 Peters, Hobday v. (No. 1), 583
 (No. 2), 857
 Wheaton v. 774
 Usticke v. 681
 Peterson v. Peterson, 473
 Petit v. Shepherd, 725
 Pett, Robinson v. 163, 333, 336,
 345
 Phibbs, Cooper v. 87
 Philanthropic Society v. Kemp,
 496
 Phillipps, Di Sora v. 58
 Phillips v. Beal (No. 2), 387
 v. Boardman, 204
 v. Edwards, 448
 v. Gutteridge, 589
 v. Hudson, 749
 v. Mullings, 200
 v. Parry, 475
 v. Phillips, 454, 708
 Phillipson v. Kerry, 93, 102,
 200
 Philpott v. St. George's Hos-
 pital, 277
 Phipps v. Child, 661
 Picard v. Hine, 856
 Piercy v. Fynney, 662
 Piggott v. Stratton, 204
 Pilkington, Coles v. 447
 Pilcher v. Rawlins, 34, 190
 Pinchin v. Simms, 704
 Pincombe, Smith v. 88
 Pinniger, Surcombe v. 448
 Piper v. Piper, 482
 Planet Benefit Building Society,
 Thompson v. 17
 Pledge v. Buss, 655
 Plenty v. West, 477
 Plunkett, Buller v. 436
 Pollard, Bone v. 313
 Pollock, Middleton v. 663
 Pomfret, Selby v. 554

Poole, *Ex parte*, 316
 Pooley *v.* Quilter, 162
 Pope, *Freeman v.* 183
 Porter *v.* Baddeley, 359
 Porter, *Griffiths v.* 356
 et al. v. Turner, 79
 Portington, *Taylor v.* 420
 Portland (Duke of), *Topham v.*
 201
 Pott *v.* Todhunter, 183
 Potter, *In re*, 817
 Potts, *Fenwick v.* 592
 v. Surr, 149
 Powell *v.* Hellicar, 220
 v. Merrett, 294
 v. Redfield, 678
 v. Riley, 475, 477
 v. Smith, 82, 426
 Powis, *Carpmael v.* 87
 Powys *v.* Blagrave, 763
 Powys Keck, *Lilford (Lord) v.*
 498
 Pratt, *Crompton v.* 464
 Perry v. 720
 Prees *v.* Coke, 158
 Presbyterian Church, *Voorhees*
 v. 160
 Presgrave, *Birkley v.* 636
 Prevost, *Gratz v.* 33
 Price, *Klinck v.* 506
 v. Ley, 102
 Prichard, *Lodge v.* 649
 Pride *v.* Bubb, 849
 Prideau *v.* Lonsdale, 182
 Prime, *Silk v.* 302, 304, 469
 Prince, *Nottidge v.* 130, 153
 Probst *v.* Brock, 539
 Prodgers, *Giacometti v.* 871
 Prole *v.* Soady, 326
 Pugh, *Hoddel v.* 411
 Pughe, *Lloyd v.* 825
 Pulsford *v.* Richards, 112, 112 a,
 116
 Pusey *v.* Pusey, *Somerset (Duke*
 of) v. Cookson, 791
 Pye, *Ex parte*, 698
 Jenkins v. 149
 Pyrke *v.* Waddingham, 424

Q.

Quayle *v.* Davidson, 233
 Queen, The, *Shropshire Union*
 Railways, etc., Company v. 50,
 380, 529
 Queen's College, Oxford, *War-*
 wick v. 749
 Quilter, *Pooley v.* 162

R.

Racey, *Dobson v.* 160
 Radcliffe, *Holloway v.* 409
 Radford *v.* Willis, 424
 Ramshire *v.* Bolton, 112 a
 Randall, *Harrison v.* 391
 Ranelagh (Lord) *v.* Melton, 413
 Rankin *v.* Weguelin, 220
 Ravenscroft *v.* Jones, 709
 Rawlins, *Pilcher v.* 34, 190
 v. Wickham, 112 a, 640
 Rayment, *Scott v.* 638
 Read, *Baker v.* 33
 Re Cornwall, 183
 Re Kane, 806
 Re Paschall, 616
 Read *v.* Steadman, 294
 Redfield, *Powell v.* 678
 Rees *v.* Berrington, 164
 Lewis v. 193
 Reese River Silver Mining Com-
 pany *v.* Atwell,
 183
 v. Smith, 112 a, 146
 Reeves *v.* Baker, 233
 v. Greenwich Tanning
 Company, 424
 Rehden *v.* Wesley, 355
 Reid *v.* Reid, 284
 Remington, *McGowan v.* 791
 Rensellaer, *Wendell v.* 177
 Reynell *v.* Sprye, 112, 145, 430
 Reynolds *v.* Godlee, 298
 Rexford *v.* Rexford, 50
 Rhodes *v.* Bate, 148
 Cowgill v. 753
 Rice *v.* Rice, 50, 529

- Parker v. Clarke*, 581
 v. Coburn, 712
 (Lord), *Druiff v. 89*
 Locking v. 567
 Murray v. 89, 96
 v. Nightingale, 204
 Smith v. 439
Parkin, Hopgood v. 357
 Surtees v. 494
 v. Thorold, 413
Parkinson v. Hanbury, 514, 515,
 543, 545
Parkis, Craig v. 436
Parnell v. Hingston, 421
Parry, Phillips v. 475
Parsons, Harms v. 141
 v. Lyman, 504
Paterson v. Murphy, 230
 v. Scott, 494
Payne v. Mortimer, 423, 492
 Moxon v. 88, 108, 148
Peabody v. Norfolk, 141
Peachy v. Somerset (Duke of),
 453, 670
Peacock, Dixon v. 323, 628
Pearce, Rolls v. 220
Pearl v. Deacon, 655
Pearmain v. Twiss, 475
Pearson v. Amicable Assurance
 Office, 421
 v. Benson, 154
 Spencer v. 529
Pease v. Jackson, 187, 530, 580
 582
 Jackson v. 475
Peckett, Field v. (No. 3), 402
Peckham v. Taylor, 228, 230
Pegler v. White, 424
Pemberton, Espin v. 535
Pembroke v. Friend, 482
Penfould v. Mould, 885
Penn v. Baltimore (Lord), 54
Pennell, Neve v. 554
Penney, Holmes v. 183
Penny, Briggs v. 233, 235, 287
Pepperell, Harris v. 89
Pepper's Will, 31, 79
Perfect v. Lane, 169
Perry v. Holl, 190
 v. Knott, 371, 372
 v. Pratt, 720
Persee v. Persee, 125
Petchell, Moore v. 474
Peter v. Beverly, 47
Peters, Hobday v. (No. 1), 583
 (No. 2), 857
 Wheaton v. 774
 Usticke v. 681
Peterson v. Peterson, 473
Petit v. Shepherd, 725
Pett, Robinson v. 163, 333, 336,
 345
Phibbs, Cooper v. 87
Philanthropic Society v. Kemp,
 496
Phillipps, Di Sora v. 58
Phillips v. Beal (No. 2), 387
 v. Boardman, 204
 v. Edwards, 448
 v. Gutteridge, 589
 v. Hudson, 749
 v. Mullings, 200
 v. Parry, 475
 v. Phillips, 454, 708
Phillipson v. Kerry, 93, 102,
 200
Philpott v. St. George's Hos-
 pital, 277
Phipps v. Child, 661
Picard v. Hine, 856
Piercy v. Fynney, 662
Piggott v. Stratton, 204
Pilkington, Coles v. 447
Pilcher v. Rawlins, 34, 190
Pinchin v. Simms, 704
Pincombe, Smith v. 88
Pinniger, Surcombe v. 448
Piper v. Piper, 482
Planet Benefit Building Society,
 Thompson v. 17
Pledge v. Buss, 655
Plenty v. West, 477
Plunkett, Buller v. 436
Pollard, Bone v. 313
Pollock, Middleton v. 663
Pomfret, Selby v. 554

Poole, *Ex parte*, 316
 Pooley *v.* Quilter, 162
 Pope, *Freeman v.* 183
 Porter *v.* Baddeley, 359
 Porter, *Griffiths v.* 356
 et al. v. Turner, 79
 Portington, *Taylor v.* 420
 Portland (Duke of), *Topham v.*
 201
 Pott *v.* Todhunter, 183
 Potter, *In re*, 817
 Potts, *Fenwick v.* 592
 v. Surr, 149
 Powell *v.* Hellicar, 220
 v. Merrett, 294
 v. Redfield, 678
 v. Riley, 475, 477
 v. Smith, 82, 426
 Powis, *Carpmael v.* 87
 Powys *v.* Blagrove, 763
 Powys Keck, *Lilford (Lord) v.*
 498
 Pratt, *Crompton v.* 464
 Perry v. 720
 Prees *v.* Coke, 158
 Presbyterian Church, *Voorhees*
 v. 160
 Presgrave, *Birkley v.* 636
 Prevost, *Gratz v.* 33
 Price, *Klinck v.* 506
 v. Ley, 102
 Prichard, *Lodge v.* 649
 Pride *v.* Bubb, 849
 Prideau *v.* Lonsdale, 182
 Prime, *Silk v.* 302, 304, 469
 Prince, *Nottidge v.* 130, 153
 Probst *v.* Brock, 539
 Progers, *Giacometti v.* 871
 Prole *v.* Soady, 326
 Pugh, *Hoddel v.* 411
 Pughe, *Lloyd v.* 825
 Pulsford *v.* Richards, 112, 112 a,
 116
 Pusey *v.* Pusey, *Somerset (Duke*
 of) v. Cookson, 791
 Pye, *Ex parte*, 698
 Jenkins v. 149
 Pyrke *v.* Waddingham, 424

Q.

Quayle *v.* Davidson, 233
 Queen, The, *Shropshire Union*
 Railways, etc., Company, v. 50,
 380, 529
 Queen's College, *Oxford, War-*
 wick v. 749
 Quilter, *Pooley v.* 162

R.

Racey, *Dobson v.* 160
 Radcliffe, *Holloway v.* 409
 Radford *v.* Willis, 424
 Ramshire *v.* Bolton, 112 a
 Randall, *Harrison v.* 391
 Ranelagh (Lord) *v.* Melton, 413
 Rankin *v.* Weguelin, 220
 Ravenscroft *v.* Jones, 709
 Rawlins, *Pilcher v.* 34, 190
 v. Wickham, 112 a, 640
 Rayment, *Scott v.* 638
 Read, *Baker v.* 33
 Re Cornwall, 183
 Re Kane, 806
 Re Paschall, 616
 Read *v.* Steadman, 294
 Redfield, *Powell v.* 678
 Rees *v.* Berrington, 164
 Lewis v. 193
 Reese River Silver Mining Com-
 pany *v.* Atwell,
 183
 v. Smith, 112 a, 146
 Reeves *v.* Baker, 233
 v. Greenwich Tanning
 Company, 424
 Rehden *v.* Wesley, 355
 Reid *v.* Reid, 284
 Remington, *McGowan v.* 791
 Rensellaer, *Wendell v.* 177
 Reynell *v.* Sprye, 112, 145, 430
 Reynolds *v.* Godlee, 298
 Rexford *v.* Rexford, 50
 Rhodes *v.* Bate, 148
 Cowgill v. 753
 Rice *v.* Rice, 50, 529

- Parker v. Clarke*, 581
v. Coburn, 712
(Lord), *Druiff v. 89*
Locking v. 567
Murray v. 89, 96
v. Nightingale, 204
Smith v. 439
Parkin, Hopgood v. 357
Surtees v. 494
v. Thorold, 413
Parkinson v. Hanbury, 514, 515,
543, 545
Parkis, Craig v. 436
Parnell v. Hingston, 421
Parry, Phillips v. 475
Parsons, Harms v. 141
v. Lyman, 504
Paterson v. Murphy, 230
v. Scott, 494
Payne v. Mortimer, 423, 492
Moxon v. 88, 108, 148
Peabody v. Norfolk, 141
Peachy v. Somerset (Duke of),
453, 670
Peacock, Dixon v. 323, 628
Pearce, Rolls v. 220
Pearl v. Deacon, 655
Pearmain v. Twiss, 475
Pearson v. Amicable Assurance
Office, 421
v. Benson, 154
Spencer v. 529
Pease v. Jackson, 187, 530, 580
582
Jackson v. 475
Peckett, Field v. (No. 3), 402
Peckham v. Taylor, 228, 230
Pegler v. White, 424
Pemberton, Espin v. 535
Pembroke v. Friend, 482
Penfould v. Mould, 885
Penn v. Baltimore (Lord), 54
Pennell, Neve v. 554
Penney, Holmes v. 183
Penny, Briggs v. 233, 235, 287
Pepperell, Harris v. 89
Pepper's Will, 31, 79
Perfect v. Lane, 169
Perry v. Holl, 190
v. Knott, 371, 372
v. Pratt, 720
Persee v. Persee, 125
Petchell, Moore v. 474
Peter v. Beverly, 47
Peters, Hobday v. (No. 1), 583
(No. 2), 857
Wheaton v. 774
Usticke v. 681
Peterson v. Peterson, 473
Petit v. Shepherd, 725
Pett, Robinson v. 163, 333, 336,
345
Phibbs, Cooper v. 87
Philanthropic Society v. Kemp,
496
Phillipps, Di Sora v. 58
Phillips v. Beal (No. 2), 387
v. Boardman, 204
v. Edwards, 448
v. Gutteridge, 589
v. Hudson, 749
v. Mullings, 200
v. Parry, 475
v. Phillips, 454, 708
Phillipson v. Kerry, 93, 102,
200
Philpott v. St. George's Hos-
pital, 277
Phipps v. Child, 661
Picard v. Hine, 856
Piercy v. Fynney, 662
Piggott v. Stratton, 204
Pilkington, Coles v. 447
Pilcher v. Rawlins, 34, 190
Pinchin v. Simms, 704
Pincombe, Smith v. 88
Pinniger, Surcombe v. 448
Piper v. Piper, 482
Planet Benefit Building Society,
Thompson v. 17
Pledge v. Buss, 655
Plenty v. West, 477
Plunkett, Buller v. 436
Pollard, Bone v. 313
Pollock, Middleton v. 663
Pomfret, Selby v. 554

Poole, *Ex parte*, 316
 Pooley *v.* Quilter, 162
 Pope, *Freeman v.* 183
 Porter *v.* Baddeley, 359
 Porter, *Griffiths v.* 356
 et al. v. Turner, 79
 Portington, *Taylor v.* 420
 Portland (Duke of), *Topham v.*
 201
 Pott *v.* Todhunter, 183
 Potter, *In re*, 817
 Potts, *Fenwick v.* 592
 v. Surr, 149
 Powell *v.* Hellicar, 220
 v. Merrett, 294
 v. Redfield, 678
 v. Riley, 475, 477
 v. Smith, 82, 426
 Powis, *Carpmael v.* 87
 Powys *v.* Blgrave, 763
 Powys Keck, *Lilford (Lord) v.*
 498
 Pratt, *Crompton v.* 464
 Perry v. 720
 Prees *v.* Coke, 158
 Presbyterian Church, *Voorhees*
 v. 160
 Presgrave, *Birkley v.* 636
 Prevost, *Gratz v.* 33
 Price, *Klinck v.* 506
 v. Ley, 102
 Prichard, *Lodge v.* 649
 Pride *v.* Bubbs, 849
 Prideau *v.* Lonsdale, 182
 Prime, *Silk v.* 302, 304, 469
 Prince, *Nottidge v.* 130, 153
 Probst *v.* Brock, 539
 Progers, *Giacometti v.* 871
 Prole *v.* Soady, 326
 Pugh, *Hoddel v.* 411
 Pughe, *Lloyd v.* 825
 Pulsford *v.* Richards, 112, 112 a,
 116
 Pusey *v.* Pusey, *Somerset (Duke*
 of) v. Cookson, 791
 Pye, *Ex parte*, 698
 Jenkins v. 149
 Pyrke *v.* Waddingham, 424

Q.

Quayle *v.* Davidson, 233
 Queen, The, *Shropshire Union*
 Railways, etc., Company, v. 50,
 380, 529
 Queen's College, *Oxford, War-*
 wick v. 749
 Quilter, *Pooley v.* 162

R.

Racey, *Dobson v.* 160
 Radcliffe, *Holloway v.* 409
 Radford *v.* Willis, 424
 Ramshire *v.* Bolton, 112 a
 Randall, *Harrison v.* 391
 Ranelagh (Lord) *v.* Melton, 413
 Rankin *v.* Weguelin, 220
 Ravenscroft *v.* Jones, 709
 Rawlins, *Pilcher v.* 34, 190
 v. Wickham, 112 a, 640
 Rayment, *Scott v.* 638
 Read, *Baker v.* 33
 Re Cornwall, 183
 Re Kane, 806
 Re Paschall, 616
 Read *v.* Steadman, 294
 Redfield, *Powell v.* 678
 Rees *v.* Berrington, 164
 Lewis v. 193
 Reese River Silver Mining Com-
 pany *v.* Atwell,
 183
 v. Smith, 112 a, 146
 Reeves *v.* Baker, 233
 v. Greenwich Tanning
 Company, 424
 Rehden *v.* Wesley, 355
 Reid *v.* Reid, 284
 Remington, *McGowan v.* 791
 Rensselaer, *Wendell v.* 177
 Reynell *v.* Sprye, 112, 145, 430
 Reynolds *v.* Godlee, 298
 Rexford *v.* Rexford, 50
 Rhodes *v.* Bate, 148
 Cowgill v. 753
 Rice *v.* Rice, 50, 529

- Parker *v.* Clarke, 581
 v. Coburn, 712
 (Lord), Druiff *v.* 89
 Locking *v.* 567
 Murray *v.* 89, 96
 v. Nightingale, 204
 Smith *v.* 439
 Parkin, Hopgood *v.* 357
 Surtees *v.* 494
 v. Thorold, 413
 Parkinson *v.* Hanbury, 514, 515,
 543, 545
 Parkis, Craig *v.* 436
 Parnell *v.* Hingston, 421
 Parry, Phillips *v.* 475
 Parsons, Harms *v.* 141
 v. Lyman, 504
 Paterson *v.* Murphy, 230
 v. Scott, 494
 Payne *v.* Mortimer, 423, 492
 Moxon *v.* 88, 108, 148
 Peabody *v.* Norfolk, 141
 Peachy *v.* Somerset (Duke of),
 453, 670
 Peacock, Dixon *v.* 323, 628
 Pearce, Rolls *v.* 220
 Pearl *v.* Deacon, 655
 Pearmain *v.* Twiss, 475
 Pearson *v.* Amicable Assurance
 Office, 421
 v. Benson, 154
 Spencer *v.* 529
 Pease *v.* Jackson, 187, 530, 580
 582
 Jackson *v.* 475
 Peckett, Field *v.* (No. 3), 402
 Peckham *v.* Taylor, 228, 230
 Pegler *v.* White, 424
 Pemberton, Espin *v.* 535
 Pembroke *v.* Friend, 482
 Penfould *v.* Mould, 885
 Penn *v.* Baltimore (Lord), 54
 Pennell, Neve *v.* 554
 Penney, Holmes *v.* 183
 Penny, Briggs *v.* 233, 235, 287
 Pepperell, Harris *v.* 89
 Pepper's Will, 31, 79
 Perfect *v.* Lane, 169
 Perry *v.* Holl, 190
 v. Knott, 371, 372
 v. Pratt, 720
 Persee *v.* Persee, 125
 Petchell, Moore *v.* 474
 Peter *v.* Beverly, 47
 Peters, Hobday *v.* (No. 1), 583
 (No. 2), 857
 Wheaton *v.* 774
 Usticke *v.* 681
 Peterson *v.* Peterson, 473
 Petit *v.* Shepherd, 725
 Pett, Robinson *v.* 163, 333, 336,
 345
 Phibbs, Cooper *v.* 87
 Philanthropic Society *v.* Kemp,
 496
 Philipps, Di Sora *v.* 58
 Phillips *v.* Beal (No. 2), 387
 v. Boardman, 204
 v. Edwards, 448
 v. Gutteridge, 589
 v. Hudson, 749
 v. Mullings, 200
 v. Parry, 475
 v. Phillips, 454, 708
 Phillipson *v.* Kerry, 93, 102,
 200
 Philpott *v.* St. George's Hos-
 pital, 277
 Phipps *v.* Child, 661
 Picard *v.* Hine, 856
 Piercy *v.* Fynney, 662
 Piggott *v.* Stratton, 204
 Pilkington, Coles *v.* 447
 Pilcher *v.* Rawlins, 34, 190
 Pinchin *v.* Simms, 704
 Pincombe, Smith *v.* 88
 Pinniger, Surcombe *v.* 448
 Piper *v.* Piper, 482
 Planet Benefit Building Society,
 Thompson *v.* 17
 Pledge *v.* Buss, 655
 Plenty *v.* West, 477
 Plunkett, Buller *v.* 436
 Pollard, Bone *v.* 313
 Pollock, Middleton *v.* 663
 Pomfret, Selby *v.* 554

Poole, *Ex parte*, 316
 Pooley *v.* Quilter, 162
 Pope, *Freeman v.* 183
 Porter *v.* Baddeley, 359
 Porter, Griffiths *v.* 356
 et al. v. Turner, 79
 Portington, Taylor *v.* 420
 Portland (Duke of), Topham *v.*
 201
 Pott *v.* Todhunter, 183
 Potter, *In re*, 817
 Potts, Fenwick *v.* 592
 v. Surr, 149
 Powell *v.* Hellicar, 220
 v. Merrett, 294
 v. Redfield, 678
 v. Riley, 475, 477
 v. Smith, 82, 426
 Powis, Carpmael *v.* 87
 Powys *v.* Blagrove, 763
 Powys Keck, Lilford (Lord) *v.*
 498
 Pratt, Crompton *v.* 464
 Perry *v.* 720
 Prees *v.* Coke, 158
 Presbyterian Church, Voorhees
 v. 160
 Presgrave, Birkley *v.* 636
 Prevost, Gratz *v.* 33
 Price, Klinck *v.* 506
 v. Ley, 102
 Prichard, Lodge *v.* 649
 Pride *v.* Bubb, 849
 Prideau *v.* Lonsdale, 182
 Prime, Silk *v.* 302, 304, 469
 Prince, Nottidge *v.* 130, 153
 Probst *v.* Brock, 539
 Prodgers, Giacometti *v.* 871
 Prole *v.* Soady, 326
 Pugh, Hoddel *v.* 411
 Pughe, Lloyd *v.* 825
 Pulsford *v.* Richards, 112, 112 a,
 116
 Pusey *v.* Pusey, Somerset (Duke
 of) *v.* Cookson, 791
 Pye, *Ex parte*, 698
 Jenkins *v.* 149
 Pyrke *v.* Waddingham, 424

Q.

Quayle *v.* Davidson, 233
 Queen, The, Shropshire Union
 Railways, etc., Company, *v.* 50,
 380, 529
 Queen's College, Oxford, War-
 wick *v.* 749
 Quilter, Pooley *v.* 162

R.

Racey, Dobson *v.* 160
 Radcliffe, Holloway *v.* 409
 Radford *v.* Willis, 424
 Ramshire *v.* Bolton, 112 a
 Randall, Harrison *v.* 391
 Ranelagh (Lord) *v.* Melton, 413
 Rankin *v.* Weguelin, 220
 Ravenscroft *v.* Jones, 709
 Rawlins, Pilcher *v.* 34, 190
 v. Wickham, 112 a, 640
 Rayment, Scott *v.* 638
 Read, Baker *v.* 33
 Re Cornwall, 183
 Re Kane, 806
 Re Paschall, 616
 Read *v.* Steadman, 294
 Redfield, Powell *v.* 678
 Rees *v.* Berrington, 164
 Lewis *v.* 193
 Reese River Silver Mining Com-
 pany *v.* Atwell,
 183
 v. Smith, 112 a, 146
 Reeves *v.* Baker, 233
 v. Greenwich Tanning
 Company, 424
 Rehden *v.* Wesley, 355
 Reid *v.* Reid, 284
 Remington, McGowan *v.* 791
 Rensellaer, Wendell *v.* 177
 Reynell *v.* Sprye, 112, 145, 430
 Reynolds *v.* Godlee, 298
 Rexford *v.* Rexford, 50
 Rhodes *v.* Bate, 148
 Cowgill *v.* 753
 Rice *v.* Rice, 50, 529

- Richards v. Delbridge, 230
 Richards v. Humphreys, 710
 Pulsford v. 112, 112 a,
 116
 Richardson v. Richardson, 421
 v. Smith, 424
 Richens, Rudge v. 549, 550
 Richmond v. Gray, 424
 Ricketts, Jones v. 169
 Rideout, Caton v. 855
 Ridgway v. Newstead, 33
 Rigden, Vane (Earl) v. 382
 Riley, Consolidated Investment
 and Insurance Com-
 pany v. 535
 Kent v. 183
 Powell v. 475, 477
 Ripley v. Waterworth, 299
 Robarts, Keane v. 370
 Roberts v. Croft, 592
 Roberts, Foster v. 169
 Roberts v. Weatherford, 704
 Robertson v. Norris, 33, 541
 Robinson, Cathcart v. 424
 Devaynes v. 371
 v. Geldard, 496
 v. London Hospital
 (Governors of), 295
 v. Pett, 163, 333, 336
 345
 v. Wheeler, 762
 v. Wheelwright, 853
 Rodger v. The Comptoir d'Es-
 compte de Paris, 439
 Rodick v. Gandell, 435
 Rodway, Sanders v. 896
 Rogers v. Challis, 451
 v. Ingham, 83
 v. Jones, 681
 Warriner v. 230, 436
 Wyke v. 164
 Rolland v. Hart, 190
 Rolls v. Pearce, 220
 Rolt v. Hopkinson, 530
 v. White, 112, 439
 Romney (Earl of), Bradford
 (Earl of) v. 89
- Rooke, Brooke v., In re, Brooke,
 304
 v. Kensington (Lord), 90
 Rooper v. Harrison, 535
 Rose, Simmons v. 477
 v. Watson, 408
 Rosher v. Williams, 193, 194
 Rossborough, Boyse v. 130, 131
 754
 Rossiter v. Hall, 776
 Rossiter, Hutton v. 112 a
 Rosslyn (Earl of), Cook v. 741
 Rost v. French, 133
 Rotherham v. Rotherham, 475
 Rousmaniere, Hunt v. 83
 Routh, Blagrove v. 33
 Row v. Dawson, 435
 Rowe v. Rowe, 359
 Rowland, Clegg v. 383
 Rowlands v. Evans, 640
 Rowlandson, Ex parte, 649
 Rowles, Ryall v. 436
 Rudge v. Richens, 549, 550
 Ruffin, Ex parte, 649
 Russell v. Clark's Ex'rs., 12
 Gray v. 774
 v. Russell, 592
 Sears v. 316
 v. Southard, 512
 v. Kellett, 276
 Russell's Policy Trusts, In re,
 436
 Rutter, Cuddee v. 405, 493
 Ryall v. Rowles, 436
 Rylance, Jacobs v. 375
- S.
- Sacia v. Borthoud, 192
 Sackville-West v. Holmesdale
 (Viscount), 237
 St. Albyn v. Harding, 169
 St. George's Hospital, Philpott v.
 277
 St. Helen's Smelting Company,
 Tipping v. 770
 St. Sauveur, Sharp v. 271

- Salmon *v.* Stuyvesant, 100
 Salter, Batstone *v.* 313
 v. Bradshaw, 169
 Saltmarsh *v.* Barrett, 294
 Salusbury *v.* Denton, 234
 Samels, Higgins *v.* 424
 Samuel *v.* Ward, 698
 Sanders, Grymes *v.* 84
 v. Rodway, 896
 Sercombe *v.* 149
 Sanderson, Stewart *v.* 354
 Sandford, Keech *v.* 333
 Mare *v.* 186
 Sanger *v.* Sanger, 859
 Sankey, Lee *v.* 367
 Sargent, Turner *v.* 236
 Saunders, Dowle *v.* 535
 v. Edwards, 30, 236
 McIntosh *v.* 89
 Savage, Brown *v.* 436
 Savery *v.* King, 149, 154
 Savin, Oriental Commercial
 Bank *v.*, In re Bird, 357
 Saxton, Sherwood *v.* 567
 Sayre *v.* Hughes, 313
 Scales *v.* Maude, 421
 Schley, Gill *v.* 133
 Schofield *v.* Heap, 708
 Scholefield *v.* Lockwood (No. 1),
 575
 (No. 2),
 89
 (No. 3),
 558
 v. Templer, 115
 Schroder *v.* Schroder, 683, 684
 Scott *v.* Cumberland, 475
 Scott, Malcolm *v.* 435
 Paterson *v.* 494
 v. Rayment, 638
 v. Spashett, 876, 883
 v. Tyler, 139
 Scrivens, Wicks *v.* 554, 555
 Seagram *v.* Knight, 33
 Seagrim, Gibson *v.* 493
 Sears *v.* Russell, 316
 Seaton *v.* Twyford, 571
 Selby *v.* Pomfret, 554
 Selfe, Newman *v.* 542
 Sells *v.* Sells, 90
 Sercombe *v.* Sanders, 149
 Seton *v.* Slade, 412
 Sexton *v.* Wheaton, 183
 Seycraft *v.* Haddon, 856
 Shadbolt *v.* Vanderplank, 712
 Shaftsbury (Countess of), Eyre
 v. 792
 Shannon *v.* Howard, etc., Ass'n.,
 674
 Sharp *v.* Leach, 148, 169, 200
 v. St. Sauveur, 271
 Sharpe *v.* Foy, 190, 903
 v. Mayor, 112 a
 Sharshaw *v.* Gibbs, 628
 Shattock *v.* Shattock, 857
 Shaw *v.* Bunny, 545
 Finch *v.* 535
 v. Foster, 407
 v. Spencer, 285
 Hubbard *v.* 514
 Sheard, Sykes *v.* 424
 Shearer *v.* Shearer, 647
 Shee *v.* French, 183, 469
 Shelley's Case, 237
 Shepard *v.* Brown, 454
 Sheperd, Petit *v.* 725
 Sherratt, Grosvenor *v.* 175
 Sherry, Newton *v.* 384
 Sherwood *v.* Andrews, 421
 v. Hull, 655
 v. Saxton, 567
 Shillibeer *v.* Jarvis, 448
 Shirley, Simmins *v.* 514 a
 Shout, Leary *v.* 640
 Shovelton *v.* Shovelton, 233
 Shrewsbury and Birmingham
 Railway Company *v.* North-
 western Railway Company,
 424
 Shropshire Union Railways, etc.,
 Company *v.* The Queen, 50,
 380, 529
 Sibley, Wilkins *v.* 381
 Siddal, Life Association of Scot-
 land *v.* 871

- Silk v. Prime, 302, 304, 469
 Simmins v. Shirley, 514 a
 Simmons v. Rose, 477
 Simms, Pinchin v. 704
 Simpson, Moseley v. 441, 442
 Sims v. Sims, 704, 707
 Sinclair v. Jackson, 31
 Sinnett v. Herbert, 276
 Skarf v. Soulby, 183
 Slade, Seton v. 412
 v. Van Vechten, 365
 Slemmer's Appeal, 640
 Slim v. Croucher, 112 a, 177
 Sloo v. Law, 365
 Smart, British Mutual Investment Company v. 597
 Hooper v. 415
 Smedley v. Varley, 161
 Smee v. Baines, 661
 Smith v. Allen, 762
 Atkinson v. 196, 574
 Ex parte, In re, Bank of Hindustan, etc., 616
 Bott v. 183
 Bromley v. 169
 v. Cherrill, 183
 v. Everett, 386
 Hammond v. 712
 v. Hurst, 248
 v. Iliffe, 89
 Kay v. 112
 v. Kay, 153
 v. Leveaux, 454
 v. O'Grady, 463
 v. Parker, 439
 v. Pincombe, 88
 Powell v. 82, 426
 Reese River Silver Mining Company v. 112 a, 146
 Richardson v. 424
 v. Smith, 883
 Tassell v. 530
 Walker v. 155
 Wheeler v. 233
 Whitbread v. 574
 v. White, 145
 Whitney v. 353
 Smith, et al., Wheeler v. 165
 Smithson, Ackroyd v. 295
 Snell, In re, 616
 Soady, Prole v. 326
 So. C. Ins. Co., Spring v. 740
 Somerset v. Cox, 436
 (Duke of) v. Cookson, 791
 Peachy v. 453, 670
 Somerville, Londesborough (Lord) v. 310
 Soulby, Skarf v. 183
 South, Ex parte, 435
 v. Bloxam, 494
 Southampton Dock Company v. Southampton Harbor and Pier Board, 454
 Southampton Harbor and Pier Board, Southampton Dock Company v. 454
 Southard, Russell v. 512
 Soutten, Deare v. 904
 Spaight v. Cowne, 190
 Spain, Oelrichs v. 12
 Sparhawk, Andrews v. 263
 Spashett, Scott v. 876, 883
 Spencer v. Pearson, 529
 Shaw v. 285
 v. Topham, 154
 Spicer v. Spicer, 871
 Spirett v. Willows, 183, 830, 883
 Spread v. Morgan, 692, 693
 Spring v. So. C. Ins. Co., 740
 Sprye, Reynell v. 112, 145, 430
 Squires v. Ashford, 883
 Staat v. Bergen, 333
 Stackhouse v. Jersey (Countess of), 50
 Stainton v. Carron Company, 664
 Staniforth, Talbot v. 169
 Stansfield v. Cubitt, 436
 Stapilton v. Stapilton, 88, 125
 Stead v. Hardaker, 475
 v. Mellor, 233
 Stedman, Read v. 294
 Steele v. Murphy, 250

- Steele v. North Metropolitan Railway Company**, 777
Stephens v. Stephens, 681
Sterne v. Beck, 674
 Meacham v. 345
Stetson, Jenkins v. 169
Stevens, Barry v. 454
Stevenson v. Masson, 708
Steward, Ex parte, 435
 v. Blakeway, 647
Stewart v. Flowers, 616
 Hitchman v. 635
 v. Sanderson, 354
Stickney, Holden v. 567
Stock v. McAvoy, 313
Stocker, Nelson v. 112
 v. Wedderburn, 424, 896
Stocks v. Dobson, 437
Stockton v. Ford, 154
Stohwasser, Mumford v. 529
Stokes, Brice v. 348, 368
Stokoe v. Cowan, 183
Stone v. Hackett, 421
 v. Stone, 267
Story v. Holcombe, 774
Strange v. Brennan, 155
 v. Fooks, 33, 164, 655
Strathmore (Countess of) v. Bowes, 182
Stratton, Cotterell v. 521
 Piggott v. 204
Streatfield v. Streatfield, 681
Streeter, Danforth v. 431
Stretch, Chubb v. 856
Strong v. Strong, 183
 v. Williams, 712
Stroughill v. Anstey, 263, 379
Stuart v. Cockerell, 436
Stump v. Gaby, 155
Sturgis, Koeber v. 883
Stuyvesant, Salmon v. 100
Sugden v. Crossland, 365
Suggitt's Trusts, In re, 883
Sullivan, Irvine v. 234
Surcombe v. Pinniger, 448
Surr, Potts v. 149
Surtees v. Parkin, 494
Sutton v. Wilders, 357
Swainson v. Swainson, 480
Swaisland v. Dearsley, 424
Swan, Re, 869
 v. Holmes, 681
Swift v. Swift, 799, 823
Swinfen v. Swinfen (No. 5), 355
Swinhoe, Grissell v. 681
Sworder, Abbott v. 122
Sykes v. Sheard, 424
Symmons, Mackreth v. 327
Symonds, Beale v. 591
 Walker v. 372

T.

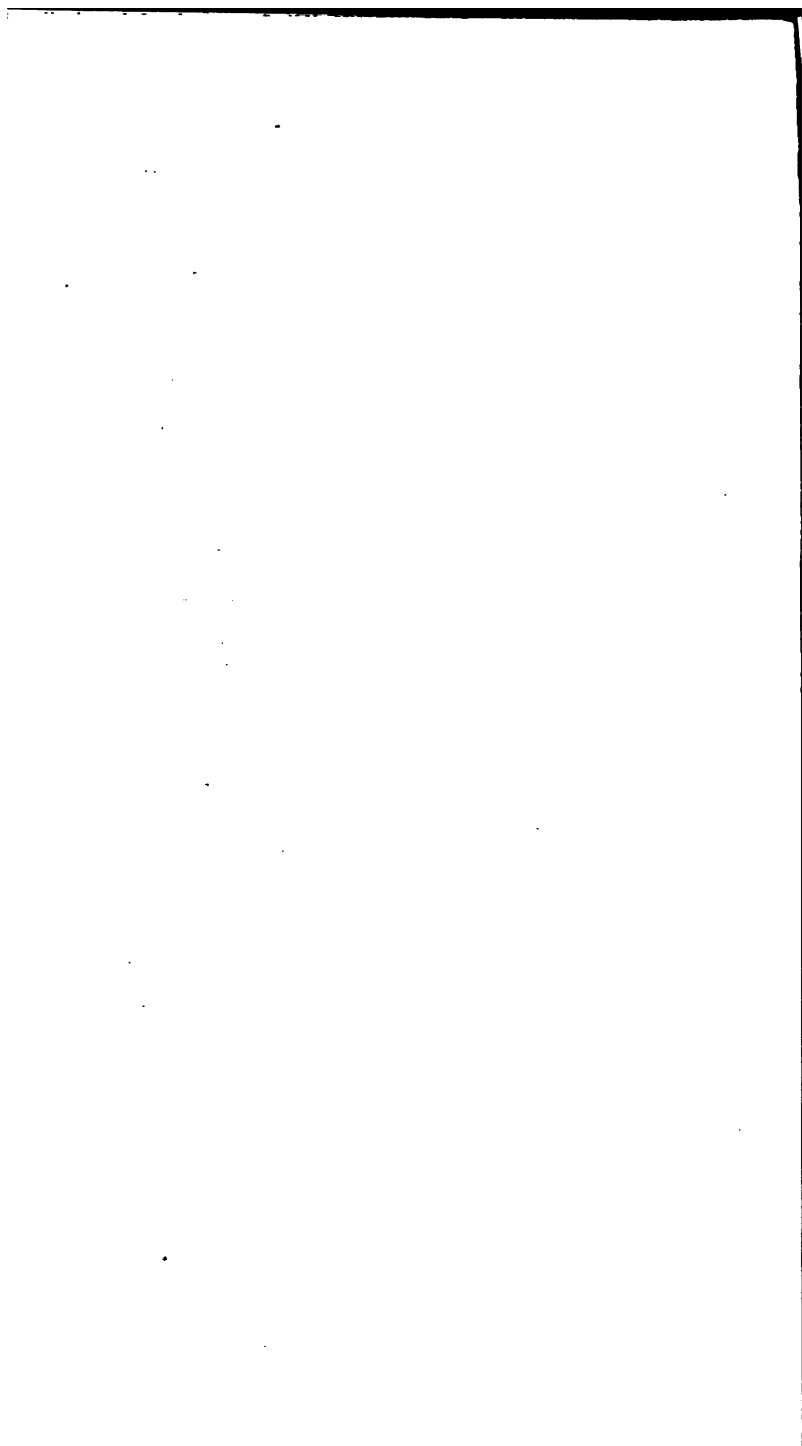
Taite, Vivers v. 424
Talbot v. Marshfield, 401
 v. Staniforth, 169
Tanner, Brown v. 436
Tarsey's Trust, In re, 830
Tassell v. Smith, 530
Tate v. Williamson, 148
 Withington v. 572, 578
Tatham v. Vernon, 421
Taylor v. Berham, 409
 Cockell v. 123
 v. Cornelius, 509
 v. Coenen, 183
 Fluker v. 454
 Gibbons v. 366
 v. Longworth, 413, 424
 McKnight v. 33
 v. Meads, 849
 Peckham v. 228, 230
 v. Portington, 420
 v. Taylor, 149, 295
 v. Taylor et al., 165
 Waters v. 637
Telegraph Dispatch, etc., Company v. McLean, 424
Tempest v. Tempest, 497
Temple, Hudson v. 413
Templer, Scholefield v. 115
Tenant, Hulme v. page 422, n.
Tench v. Cheese, 476, 477
Tennant, Harrison v. 640
Terrell, Daw v. 592

- Terry, Darville *v.* 183
 Texas *v.* Hardenberg, 50
 The Alton M. and F. Ins. Co. *v.*
 Buckmaster, 720
 Thomas, Jones *v.* 740
 Tilley *v.* 413
 Thompson, Bibby *v.* (No. 1), 233
 v. Cartwright, 190
 Craft *v.* 762
 v. Finch, 366
 v. Hudson, 518, 547,
 558, 674, 678
 Kirkwood *v.* 545, 555
 v. Planet Benefit
 Building Society,
 17
 v. Tomkins, 436
 v. Webster, 183
 v. Whitmore, 90, 93
 Thomson *v.* Eastwood, 267
 Thorn, Waters *v.* 154, 155
 Thornborough *v.* Baker, 339
 Thornbury, Wilson *v.* 691
 Thorold, Parkin *v.* 413
 Thorp *v.* Owen, 233
 Thurgood, Miller *v.* 681, 682
 Thurman *v.* Burt, 131
 Thwaites, Lambert *v.* 284
 Thynne (Lady E.) *v.* Glengall
 (Earl of), 447, 704
 Tidd *v.* Lister, 495, 891
 Tiernan *v.* Jackson, 435
 Tildesley *v.* Clarkson, 424
 Tilley *v.* Thomas, 413
 Tillinghast, Easterbrook *v.* 285
 Tinsley *v.* Lacy, 775
 Tipping *v.* St. Helen's Smelting
 Company, 770
 Todhunter, Pott *v.* 183
 Toker *v.* Toker, 200
 Tolman, Manningford *v.* 316
 Tollet *v.* Tollet, 31, 79
 Tomkins *v.* Colthurst, 475
 Thompson *v.* 436
 Tomson *v.* Judge, 154, 155
 Topham *v.* Portland (Duke of),
 201
 Spencer *v.* 154
 Torre *v.* Torre, 89
 Torr's Estate, 493
 Torry *v.* Bank of New Orleans,
 160
 Tourle, Catt *v.* 141
 Townsend, Garth *v.* 79
 Townshend *v.* Mostyn, 479, 480
 Tracy *v.* Tracy, 304
 Trail *v.* Baring, 112 a
 Travis, Waters *v.* 415
 Tribe, Hart *v.* (No. 4), 233
 Wollaston *v.* 200
 Trinder, Mullings *v.* 424
 Trinity College, Cambridge, At-
 torney-General *v.* 277
 Trist *v.* Childs, 142
 Trotter, Holland *v.* 762
 Trumbull, Edwards *v.* 592
 Trutch *v.* Lamprell, 366
 Truwhitt, Hance *v.* 683
 Tucker *v.* Burrow, 313
 Curnick *v.* 233
 v. Laing, 164
 Tullis, Cook *v.* 439
 Turle, Booth *v.* 179
 Turner *v.* Collins, 149, 150
 v. Letts, 616
 Liverpool Borough Bank
 v. 609
 v. Nye, 228
 Porter, et al. *v.* 79
 v. Sargent, 286
 Ward *v.* 219
 v. Wright, 319, 767
 Turnley *v.* Hooper, 183
 Turquand, Oakes *v.* 113
 Twiss, Pearmain *v.* 475
 Twyford, Seaton *v.* 571
 Twyne's Case, 183
 Tyler, Scott *v.* 139
 v. Yates, 40, n., 168, 170
 Tynte *v.* Hodge, 169
 Tyrrell *v.* Bank of London, 155,
 160
 Bank of London *v.* 155,
 160
 Tyrrell's Case, 231
 Tyson *v.* Jackson, 431

- U.
- Udall, Kenny *v.* 814
 Underwood *v.* Wing, 294
 Ungley *v.* Ungley, 448
 Union Bank, Bradford *v.* 89
 Union Bank of Georgetown *v.* Geary, 88
 United Guarantee Company, Myers *v.* 431
 United Ins. Co., Lyman *v.* 89
 United States *v.* Daniel, 82
 v. Howell, 164
 v. Kirkpatrick, 464
 Wanless *v.* 429
 Universal Life Assurance Company, Ex parte, In re Northern Assam Tea Company, 439
 Upperton *v.* Nicholson, 424
 Usticke *v.* Peters, 681
- V.
- Vanderberg *v.* Palmer, 230
 Vanderplank, Shadbolt *v.* 712
 Wright *v.* 33, 149, 151
 Vanderstegen, Vaughan *v.* 856, 857
 Vane (Earl) *v.* Rigden, 382
 Vanhythuysen, Barton *v.* 183, 193
 Vansittart *v.* Vansittart, 419, 823
 Van Vechten, Slade *v.* 365
 Van Vronker *v.* Eastman, 518
 Varley, Smedley *v.* 161
 Varna Railway Company, Crampton *v.* 405
 Vaughan *v.* Buck, 883
 v. Vanderstegen, 856, 857
 Veal *v.* Veal, 220
 Verity *v.* Wylde, 617
 Vernon, Tatham *v.* 421
 Viner *v.* Francis, 210
 Vint *v.* Padget, 554
- Vivers *v.* Taite, 424
 Vivian, Jegon *v.* 749
 Voorhies *v.* Presbyterian Church, 160
 Vorley *v.* Cook, 112
 Voyle *v.* Hughes, 421
- W.
- W—— *v.* B——, 424, 725, 727
 B—— *v.* 424, 725, 727
 Waddingham, Pyrke *v.* 424
 Wadhams *v.* Gay, 31
 Wainford *v.* Heyl, 856
 Wake, Carter *v.* 605, 612
 v. Conyers, 720
 Walker *v.* Armstrong, 89
 v. Drury, 882–4
 v. Jones, 580
 v. Micklethwait, 59
 v. Smith, 155
 v. Symonds, 372
 Wall *v.* Colshead, 300
 Wallace *v.* Auldjo, 889
 Waller *v.* Barrett, 383
 Wallis, Atterbury *v.* 187, 190
 Walrond *v.* Walrond, 823
 Walters, Hunter *v.* 114, 115, 133
 v. Morgan, 118, 424
 Wanless *v.* United States, 429
 Ward, Merriman *v.* 464
 Miss. and Mo., R. R. *v.* 770
 Mosley *v.* 689
 Samuel *v.* 698
 v. Turner, 219
 v. Yates, 883
 Ware, Dening *v.* 183, 421
 v. Gardner, 183
 Warrick *v.* Queen's College, Oxford, 749
 Warriner *v.* Rogers, 230, 436
 Waters *v.* Howard, 681
 v. Taylor, 637
 v. Thorn, 154, 155
 v. Travis, 415
 Waterworth, Ripley *v.* 299

- Watkins, Harris *v.* 302, 304
 Watney *v.* Wells, 640
 Watson *v.* Lyon, 616
 v. Marshall, 883, 884
 v. Le Roy, 34
 Rose *v.* 408
 v. Watson, 708
 v. Wellington (Duke of), 435
 Watts, Eaton *v.* 233
 Massie *v.* 54
 Weale *v.* Ollive, 421
 Wearing, Haygarth *v.* 112 a
 Weatherford, Roberts *v.* 704
 Webb *v.* England, 405, 819
 v. Hewitt, 164, 657
 Webster *v.* Cecil, 424
 Thompson *v.* 183
 v. Webster, 436
 Wedderburn, Stocker *v.* 424, 896
 Weguelin, Rankin *v.* 220
 Welch, Mandeville *v.* 435, 592
 Wellington (Duke of), Watson *v.* 435
 Wells, Astor *v.* 190
 v. Maxwell (No. 1), 413
 Watney *v.* 640
 Wendell *v.* Rensselear, 177
 Wentworth *v.* Lloyd, 33, 160
 Wesley, Rehden *v.* 355
 West, Baxter *v.* 640
 Brashears *v.* 435
 Charlton *v.* 704
 Plenty *v.* 477
 West Mostyn Company, Mostyn *v.* 117
 Wheatcroft, Allsopp *v.* 141
 Wheaton *v.* Peters, 774
 Sexton *v.* 183
 Wheeler *v.* Howell, 304
 Robinson *v.* 762
 v. Smith et al., 165
 v. Smith, 233
 Wheelwright, Robinson *v.* 853
 Whelan *v.* Whelan, 165
 Whieldon, McCarogher *v.* 704, 707
 Whimper, Daking *v.* 193
 Whitaker, Darbey *v.* 440
 Eaton *v.* 448
 Whitbread, Macnab *v.* 233
 v. Smith, 574
 White, Alderson *v.* 506
 Ford *v.* 598
 v. Grane, 806
 Harcourt *v.* 33
 McDonell *v.* 33
 Pegler *v.* 424
 Rolt *v.* 112, 439
 Smith *v.* 145
 White's Trusts, Re, 284
 Whiting *v.* Burke, 634
 Whitley *v.* Whitley, 681
 Whitmore, Thompson *v.* 90, 93
 Whitney *v.* Smith, 353
 Whyte, Goddard *v.* 655
 Wickeys, Aberaman Iron Works *v.* 415
 Wickham, Graham *v.* (No. 1), 714
 Rawlins *v.* 112 a, 640
 Wicks *v.* Scrivens, 554, 555
 Widmore, Blandy *v.* 51, 316
 Wiginton, Worthington *v.* 692
 Wiggins *v.* Burkham, 457
 Wilbanks *v.* Wilbanks, 681
 Wilcocks *v.* Wilcocks, 51, 316
 Wilcox *v.* Wilcox, 647
 Wilde *v.* Milne, 644
 Wilders, Sutton *v.* 357
 Wilkins, Attorney-General *v.* 34
 v. Sibley, 381
 Wilkinson, Castle *v.* 416
 v. Clements, 424
 v. Dent, 681
 v. Fowkes, 39
 v. Lindgren, 275
 v. Wilkinson, 140
 Willard, Cole *v.* 712
 v. Eastham, 856
 Willes *v.* Greenhill (No. 1, 2), 436
 Williams *v.* Bayley, 131
 v. Evans, 447
 v. Headland, 383
 Nanney *v.* 155

- Williams, Rosher *v.* 193, 194
 Strong *v.* 712
 v. Williams, 125, 313, 754
 Williamson, Tate *v.* 148
 Willings, Consequa *v.* 85
 Willis, Cochrane *v.* 87, 424
 Radford *v.* 424
 Willows, Spirett *v.* 183, 830, 883
 Wills *v.* Bourne, 496
 Wilson *v.* Bell, 808
 v. Dunsany (Lady), 504
 Gregory *v.* 676
 Liverpool Marine Credit Company *v.* 608
 v. Lloyd, 164
 Newman *v.* (No. 2), 883
 v. Northampton, etc., Railway Company, 405
 v. Thornbury, 691
 v. Wilson, 89, 101, 535, 894, 896
 Wright *v.* 123
 Winchelsea (Earl of), Dering *v.* 633
 Windham, Bessey *v.* 183
 Windross, Middleton *v.* 681
 Wing, Underwood *v.* 294
 Winter, Bagshaw *v.* 883, 884
 Wintour *v.* Clifton, 681, 682, 690
 Withington *v.* Tate, 572, 578
 Witt *v.* Amis, 220
 Amis *v.* 220
 Wolferstan, Jervis *v.* 392 a, 393
 Wollaston *v.* Tribe, 200
 Wolterbeek *v.* Barrow, 89
 Wonham, Dally *v.* 160, 169
 Wood, Barnes *v.* 187
 v. Ordish, 475
 Woodford *v.* Charnley, 421
 Woods, Hilton *v.* 430
 Woolam *v.* Hearn, 449
 Wooldridge *v.* Norris, 164
 Woolley, Blatchford *v.* 856, 857
 Woolridge *v.* Woolridge, 681
 Wormald, Cooper *v.* 376
 Wormsley's Estate, In re, 483
 Worseley *v.* De Mattos, 247
 Worthington *v.* Wigington, 692
 Wright, Dixie *v.* 409
 v. Goff, 89
 Lincoln *v.* 179
 v. Maidstone (Lord), 76
 Turner *v.* 319, 767
 v. Vanderplank, 33, 149, 151
 v. Wilson, 123
 Wyatt, Johnson *v.* 668
 Wyke *v.* Rogers, 164
 Wylde, Verity *v.* 617
 Wynch *v.* Grant, 374
 Wyndham, Bennett *v.* 357
 Wynn, Green *v.* 164
 Wythe *v.* Henniker, 498 .
- Y.
- Yale *v.* Dederer, 856
 Yates, Tyler *v.* 40, 168, 170
 Ward *v.* 883
 Yelverton, Bubb *v.* Ex parte Hastings, 768
 Young, Chaplin *v.* (No. 2), 365
 v. Young, 477, 530



A MANUAL OF EQUITY JURISPRUDENCE.

INTRODUCTION.

SECTION I.

OF THE NATURE OF EQUITY JURISPRUDENCE, AND THE EXTENT OF EQUITY JURISDICTION.

To explain the true nature of Equity Jurisprudence with brevity, perspicuity, and accurate precision, is a task of great difficulty¹ on account of the mixed character of the science and the immense extent of learning which, for the purpose, it is necessary for the mind to survey at one and the same time. It is most important, however, that some attempt be made to accomplish this before the reader's attention is directed to the particular doctrines of the vast system, the principal features of which it is the design of these pages to delineate. 1.

Difficulty
and importance
of the
inquiry.

¹ See Story's Com., Ch. I, *passim*.

Definition
of Equity
Jurispru-
dence.

The writer believes it is impossible to give a short definition of Equity Jurisprudence without either failing to convey any accurate and definite knowledge, or else positively misleading the student. But Equity Jurisprudence, in the specific and technical sense of the term, as contradistinguished from natural, abstract, and universal Equity, and from Law and the Statutory Jurisprudence of the Courts, may be described to be a portion of justice or natural equity, not embodied in legislative enactments or in the rules of the Common Law, yet modified by a due regard thereto, and to the complex relations and convenience of an artificial state of society, and administered in regard to cases where the particular rights in respect whereof relief is sought, come within some general class of rights enforced at Law, or may be enforced without detriment or inconvenience to the community, but where, as to such particular rights, the Courts of Law could not, or originally did not, clearly afford any relief or adequate relief, at least not without circuituity of action or multiplicity of suits, or did not make such restrictions, adjustments, compensations, qualifications, or conditions, as might be necessary in order to take due care of the rights of all who were interested in the property in litigation. Although there may possibly be some peculiar cases which may at first sight be thought to prove this description to be faulty, yet it will probably appear, on closer consideration, that such cases (if any such there are) are not to be regarded as illustrative of the general character of Equity Jurisprudence; and it will probably be found, and the

following observations may tend to show, that such description conveys a just notion of the true nature of that science. 2.

I. In the most general sense, Equity is synonymous with natural justice.¹ But Equity, as contradistinguished from Law, and as administered in our Courts of Equity, has a much narrower and an otherwise different signification. Many matters of natural justice, by the Equity Jurisprudence of this and every other civilized nation, are left to be disposed of *in foro conscientie*, from the difficulty of framing any general rules to

Equity Jurisprudence is not synonymous with natural justice.

¹ See St. § 1, 2.*

* Equity, as applied to Jurisprudence, does not comprehend the broader principles of universal law, which are properly embraced in the more extended import of the term Natural Equity, or what is sometimes called Moral Equity. Story's Eq. Jur. § 1-24.

Equity Jurisprudence, as a distinct branch of the law, is the complement of legal administration, whereby through defect of evidence, or from imperfect procedure, it is unable to afford that ample and specific redress for all injuries, which Courts of Equity may do, by requiring the defendant to answer upon his conscience, by reforming mistakes in written contracts, and by injunctions, both restrictive and mandatory, and in many other ways. It is that portion of remedial justice which is administered exclusively by Courts of Equity. Equity will not relieve against any defect, imperfection, or abuse of the law itself, but only against the unconscionable claims and abuses of the parties. Courts of Equity can give no different construction to the law, whether written or customary, from that which must govern Courts of Law. They are equally bound by precedents with Courts of Law. Courts of Equity afford relief in regard to those rights recognized by the Jurisprudence of the State, where the remedy of law is doubtful, inadequate, or incomplete. Story's Eq. Jur. § 25-34.

meet them, and from the mischief and inconvenience which would arise from attempting judicially to enforce such duties as charity, gratitude, and kindness, or even positive engagements, where they are not founded on a valuable consideration, or at least on what is deemed a good consideration.¹ 3.

And, on the other hand, setting aside that body of natural justice which is comprised in statutory provisions, a vast proportion of what is specifically denominated Law (as contradistinguished from what is technically designated Equity), has been reared up independently of legislative enactments or arbitrary or conventional rules, and consists, in the main, of a system of natural equity or justice, modified so as to be adapted to the manifold and complicated relations and exigencies of a highly artificial state of society.² And as to the construction of statutes, a Court of Law is bound to interpret them according to the intention of the legislature, as much as a Court of Equity; indeed, both adopt the same principles of interpretation.³ 4.

So that, on the one hand, natural justice or equity was not excluded from the system of Law; nor, on the other hand, is it carried out to an unlimited extent even in a Court of Equity. And in the cases to which it is applied in a Court of Equity, it is not always applied in an unmodified form, but is qualified (as we shall see in the third section and in subsequent pages) by a due regard to legislative enactments and the rules

¹ See St. § 2, 8, note, and § 14; 1 Sp. 447, n (d).

² See St. § 7, 8, notes, and § 20, 34.

³ See St. § 15.

of the Common Law, and to the varied and complicated relations and the general convenience of the subsisting order of things. 5.

The truth, then, appears to be this: first, that a large portion of natural equity is left to be administered *in foro conscientie*; because in addition to the difficulty of propounding precise rules, applicable to all cases, a greater detriment and inconvenience to the community would probably ensue from attempting to enforce it in the public courts, than from leaving it to the decision and the power of conscience, and to the various motives by which mankind are ordinarily influenced.

A large portion of natural justice is left to conscience.

Secondly, that another large portion of natural equity was always administered by the Courts of Law, and is denominated Law in contradistinction to what is technically termed Equity. And thirdly, only a portion, therefore, of natural equity, and that in a modified form, is administered in a Court of Equity; and that portion is specifically and technically called Equity, in contradistinction as well to the two other portions of equity, or to natural, abstract, and universal equity or justice in general, as to legislative enactments, and arbitrary, feudal, or simply conventional rules. 6.

Another large portion was always administered in courts of law.

That which is administered in courts of equity is therefore only a portion of natural justice, and in a modified form.

II. 1. There were particular rights which came within some general class of rights enforced at Law, or capable of being judicially enforced, not only in particular instances, and to the benefit of particular individuals,

Where there is no remedy at law, and equity had exclusive jurisdiction.

but in all cases, and to the advantage of the community at large; and yet there were no forms of action by which relief could be obtained in respect of such particular rights, and they were consequently left to conscience by the Courts of Law; but being capable of being enforced by proceedings in Equity, and being of a character demanding judicial sanction and interposition, Courts of Equity readily interfered and afforded relief. In these cases, therefore, Courts of Equity had exclusive jurisdiction. This, for example, was the case with trusts, for the most part; with the right to relief in many instances of accident, mistake, fraud, penalties, and forfeitures; and, in most cases, with the right to protection against anticipated loss or injury.¹ 7.

Where equity assumed jurisdiction on account of the inadequacy of the legal relief; 2. There were many other cases, in which the kind of relief which was afforded by Courts of Law was inadequate, but in which Courts of Equity could give the precisely appropriate relief. For example, Equity would often enforce the specific performance of a contract; whereas Courts of Law could only give damages for the breach thereof.² 8.

Or to avoid circuity of action or multiplicity of suits; There were also cases in which adequate and complete relief could be had at Law, but in order to obtain it, circuity of action or multiplicity of suits was necessary; whereas complete justice could be done by a single suit in Equity.³ 9.

¹ See St. § 29, 962.

² See St. § 30, 33.*

³ See St. § 64 k, 496, 621, 853, 854.

* See Adams's Equity, Intr. xxxv.

Again: Courts of Law could not do more than pronounce a positive judgment in a settled form, either for the plaintiff or the defendant, irrespective of the peculiar circumstances of the case; whereas Courts of Equity could adapt their decrees to all the various circumstances which might arise, and could take due care of the rights of all who were in any way interested in the property in litigation.¹ 10.

Or to take
due care of
the rights of
all;

In these three classes of cases, Equity had a concurrent, and practically an exclusive jurisdiction. Indeed, in some, if not in all of the last class of these cases, Equity used to assert an exclusive jurisdiction by granting an injunction against proceedings in other courts.² 11.

The necessity for a discovery in a Court of Equity furnished a ground of jurisdiction for relief in a great variety of cases. For the court, having acquired cognizance of the suit for the purpose of discovery, would frequently entertain it for the purpose of relief.³ 12.

Or on ac-
count of the
necessity for
a discovery.

¹ See St. § 26-28, 437.

² See Title II, Chap. I, *infra*.

³ St. § 691, 692.*

* There is a difference between the English and American Courts as to the extent of the jurisdiction for relief, as consequent upon discovery. In the United States the more convenient doctrine obtains, and where the discovery is effectual, the court will go on and give adequate relief, if in its power, to prevent multiplicity of suits, unless where there is an action pending. St. Eq. Jur. § 71, 456; Adams's Eq. 20, note 1; Russell v. Clark's Ex's, 7 Cranch, 69. See also Oelrichs v. Spain, 15 Wall. 211.

Or on account of the original denial of due relief of law.

And in cases where the Courts of Law originally did not afford adequate relief, Courts of Equity exercised a concurrent jurisdiction, unless prevented by a legislative enactment, even though the Courts of Law subsequently gave such relief. For they could have no power to circumscribe the jurisdiction of Courts of Equity.¹ 13.

Or the doubtfulness of obtaining such relief.

And so if it was doubtful whether the Courts of Law could give such relief, the Courts of Equity had jurisdiction. 14.

3. In some cases a matter was most properly cognizable at Law, and Courts of Law could always have afforded due relief, had they possessed that evidence which a Court of Equity could obtain, but which a Court of Law formerly could not obtain. In these cases Courts of Equity used to have an auxiliary jurisdiction to provide the Courts of Law with that evidence.² 15.

Where equity had auxiliary jurisdiction.

Where it had no jurisdiction.

4. Where it was clear that the Courts of Law could always afford adequate relief, without the aid of Courts of Equity, and without circuity of action or multiplicity of suits, and could take due care of the rights of all who were interested in the property in controversy, Equity had no jurisdiction.³ 16.

And Courts of Law and Equity are in general alike ousted in the case of internal disputes between the

¹ See St. § 64 i, 81; 2 Sp. 16.

² See St. § 64 k, 673.*

³ See St. § 33, 684 a and c, 686; 1 Sp. 408, 420; 2 Sp. 16.

members of a building or other friendly society and the society itself, or any of the officials of the society and the society itself, where the Act of Parliament under which it is constituted, or the Friendly Societies Act, provides that such disputes shall be settled by arbitration.* 17.

Nor, as already observed, have Courts of Equity any jurisdiction as to those classes of rights which could not be judicially enforced without occasioning a greater general mischief or inconvenience than that which results from leaving them to be disposed of *in foro conscientie*.† 18.

It will be seen from the next section that both the Equity and Common Law Jurisdiction have been the subject of very great alteration by the Judicature Acts. 19.

* *Thompson v. Planet Benefit Building Society*, L.R., 15 Eq. 333.

† In America, Equity Jurisprudence had its origin at a far later period than the Jurisdiction properly appertaining to the Common Law, and has grown up chiefly since the formation of the National government; as at present exercised in this country, it is founded upon, coextensive with, and in most respects conformable to, that of England. The Constitution of the United States has, in one clause, conferred on the Federal judiciary cognizance of cases in Equity as well as in Law, and the uniform interpretation of that clause has been, that, by cases in Equity, are meant cases which, in the Jurisprudence of England, are so called, as contradistinguished from cases of the Common Law. In nearly all the States in which Equity Jurisdiction is recognized, it is now administered in the modes and according to the forms which appertained to it in England. St. Eq. Jur. § 56-58. And, as a general rule, in America, State courts have that jurisdiction which is conferred upon them by statute, and the statutes which derogate from or add to the Common Law powers of courts are generally strictly construed. St. Eq. Jur. § 33, note.

SECTION II.

OF THE GENERAL EFFECT OF THE JUDICATURE ACTS,
AS REGARDS EQUITY JURISDICTION AND JURISPRU-
DENCE.

THE Judicature Acts, 1873 and 1875, almost entirely relate to Pleading and Practice, and not to Jurisprudence, which is the exclusive subject of this Manual and the author's Manual of Common Law. They do not make any general fusion of Law and Equity. But the first Act (see Appendix) consolidates the different Superior Courts by which Law and Equity are administered into one Court, which is divided into several "Divisions." And section 24 (Appendix) enables every Judge of the Court to deal concurrently with matters of Law and Equity arising between the same parties, except so far as by section 34 certain business is assigned to particular Divisions of the Court. Subsection (7) of section 24 enables the High Court of Justice and the Court of Appeal to "grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said

parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided." And section 89 gives similar powers to the Judges of Inferior Courts, to the extent of their jurisdiction. Section 25 (Appendix) makes a few changes in certain specific points of Jurisprudence, which are noticed in the proper places in this Manual. And section 25 also comprises the important enactment (clause 11, Appendix), "that generally in all matters, not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of Equity and the rules of Common Law with reference to the same matter, the rules of Equity shall prevail." 20.

SECTION III.

OF THE GENERAL MAXIMS OF EQUITY JURISPRUDENCE.

IN addition to those maxims which are acted upon as well in Courts of Law as in Courts of Equity, and besides various other maxims which in terms apply to particular parts of the Equity system, there are certain general maxims peculiar to Equity, which it is of the greatest use rightly to understand and to bear in mind whether in reading or in practice. 21.

I. It is a maxim, that Equity will not suffer a right to be without a remedy.¹ It will be evident from the first section that this lies at the very foundation of a large proportion of Equity Jurisprudence, as a suppletory system. But it will also appear from the observations made in that section, that this maxim must be regarded as referring exclusively to rights which come within a class of rights enforced at Law, or capable of being judicially enforced without occasioning a greater detriment or inconvenience to the public than would result from leaving them to be disposed of *in foro conscientiae*. And it must also be understood to refer to cases where the party who is remediless at Law has not sacrificed or lost his remedy by his own act or laches,² and where there was no equal or superior adverse right. And there are some exceptive cases of claims of natural jus-

1. No right
without a
remedy.

¹ 1 Cru. Dig. X. 1, 50.

² See St. § 684 a and c.

tice capable in themselves of being enforced with propriety, but to which neither the Common Law nor Equity give any remedy: as in the case of the exemption at Common Law of the lands of deceased debtors from the payment of debts—an exemption which has been removed by certain statutes, particularly by 3 and 4 Will. 4, c. 104.¹ 22.

II. But not only will Equity often administer a remedy where the Law would not give any relief, but it will also afford relief, as we have already seen, where the Courts of Law originally did not clearly give adequate and complete relief, at least without circuity of action or multiplicity of suits, or could not take due care of the rights of all who were interested in the property in litigation. 23.

2. Equity will administer a due remedy, where it could not be had at law.

III. But, as we have also seen, where it is clear that the Courts of Law did always afford adequate and complete relief without the aid of a Court of Equity, and without circuity of action and multiplicity of suits, and could take due care of the rights of all persons interested in the property in litigation, there Equity has no jurisdiction. 24.

3. But equity will not interfere where the courts of Law could administer a due remedy.

Thus, where there was always an adequate and complete remedy at Law for the recovery of rent, either by an action or distress, no suit will be entertained in Equity, although the remedy in Equity may be more beneficial. The cases

Illustration drawn from the case of rents.

¹ See 1 Sp. 174, 417; and Smith's Compendium of the Law of Property, 5th ed., par. 1366.

in which a suit is commonly entertained in Equity for this purpose are such as stand upon some peculiar equity ; as where the premises out of which the rent is payable are uncertain ; or where the time or amount of the payment is uncertain ; or where a discovery or an apportionment was wanted ; or where the remedy at Law is obstructed or evaded by fraud, or is gone without laches ; or where none ever existed ; or where it was inadequate, incomplete, or doubtful.¹ 25.

IV. Although Equity would go beyond the Law in supplying a remedy in the cases above mentioned, yet it is a well-known maxim that Equity follows the Law.² The reason is, that there may be uniformity of decision.³ 26.

The true meaning of this maxim would seem to be, that Equity is governed by legislative enactments and the rules of Law, in regard to legal estates, rights, and interests ; and that it is regulated by the analogy of such legal estates, rights, and interests, and the legislative enactments and rules of Law affecting the same, in regard to equitable estates, rights, and interests, where any such analogy plainly subsists ; if, in each case, there are no peculiar circumstances rendering it absolutely necessary to deviate from this rule, or creating an equitable obligation in one of the litigant parties, and an equitable correlative right in favor of another litigant party, and requiring a different course to be taken in the particular case, without overturning or destroying the general application of any legislative

¹ See St. § 684-687.

² See St. § 64 a, b ; 1 Sp. 419, 420.

³ 2 Sp. 359, n. (a).

⁴ Equity follows the Law.

enactments or rules of Law that may, in terms or by analogy, apply to the case. 27.

There may indeed be cases in which Equity has followed the Law, even where there have been such peculiar equitable circumstances. But it is conceived that these must be cases in which the Court has (perhaps improperly) declined to exercise the authority which it really possessed and has ordinarily exerted. 28.

To affirm that Equity follows the Law in any less limited sense than that above pointed out, would be to negative the existence of a large portion of Equity Jurisprudence, if not to assert that there is no such thing as Equity as distinct from Law. But to affirm that Equity follows the Law, in the restricted sense above pointed out, is merely to assert what is unquestionably true and most important to be remembered, namely, that Equity will suffer legislative enactments and the rules of Law to govern, and the course of Law to proceed, as far as it can without sacrificing claims grounded on peculiar circumstances which render it incumbent upon a Court of Equity to interpose, in accordance with the maxim previously mentioned, that Equity will not suffer a right to be without a remedy. 29.

In illustration of the maxim, as it applies to equitable estates, rights, and interests, it may be observed that the limitations by which equitable estates and interests are created by way of trust executed, that is, a trust formally and finally declared by the instrument crea-

Illustration of the maxim in regard to trusts executed.

ting it, are construed in the same manner as similar limitations of legal estates and interests would be construed in a Court of Law ; so that, for example, what would create an estate tail in the one case, will create an estate of the same kind in the other case.

Maxim does not apply to trusts executory in all respects.

But such a constructive assimilation does not always take place in regard to equitable estates and interests created by way of trust executory, which, as opposed to a trust executed, is a trust not formally and finally declared by the instrument creating it, but intended to be so declared by some future instrument. For, in the case of trusts executory, there is often no substantial analogy, forming a ground for such assimilation ; because in many cases, the words are not so much actual limitations, such as those by which legal estates and interests are created, as instructions or intimations as to the mode in which the author of the trust wishes the property to be settled by some future conveyance, settlement, or assurance, referred to in the instrument creating the trust ; and therefore the words are to be construed according to the intent of the party, as presumable from the nature of the case, or from the other parts of the instrument, rather than according to what would be the strict operation of the words, supposing them to be actual limitations contained in a formal and final instrument.¹ 30.

¹ As to these trusts, see Smith's Executory Interests, annexed to Fearn's Treatise, § 489-502, and § 601-637 ; Lord Glenorchy v. Bosville, 1 White and Tudor's Lead. Cas. Eq., 4th Am. ed. 1, *et seq.* Saunders v. Edwards, 2 Jones's Eq. 134.

In illustration of the qualification that Equity follows the Law only where there are no such peculiar circumstances as above mentioned, it may be observed that Equity follows the Law in regard to the rule of primogeniture, although that rule in any particular instance in which it is so followed, may be productive of the greatest hardship towards all the younger members of a large family who, in one sense, by the operation of the rule, may be left without any sort of provision, whilst the eldest son may be placed in a state of the greatest affluence. But these are not peculiar circumstances creating an equitable right to relief in favor of the youngest children against the eldest son, and demanding the interposition of a Court of Equity. The mere absence or want of a provision, which may have arisen from the culpable neglect of the parent, can create no equity against the eldest son. He has a right to the descended or entailed estate, without any reference to the circumstances of the other members of the family; and the mere fact that they have not been provided for by their parent, can impose on the eldest son no obligation in a Court of Equity to divest himself, and can give the younger children no equitable right to strip him of that provision which the Law has appointed him. No relief could be given in such a case as this without directly derogating from a rule of Law, which a Court of Equity has no power to do. But if an eldest son should prevent his father from executing a will devising one of his estates to a younger brother, by promis-

Illustrations of the qualification added in the writer's statement of the true meaning of the maxim.

Law of primogeniture.

ing to convey the estate to such younger brother, although that estate would at Law descend to the eldest son, a Court of Equity would doubtless interpose, and prevent the eldest son from asserting any claim to it.¹ So Equity will often support the defective execution of powers, where at Law the act would be wholly nugatory.² And in cases under the old Statute of Limitations,³ Equity often interfered, notwithstanding the time fixed by the statute had expired, where it would have been inequitable to have allowed the statute to be a bar; as when a person perpetrated a fraud, which was not discovered till the statutory bar applied at Law; or where a person carried on an unfounded litigation, protracted so as to subject his adversary to the statutory bar at Law.⁴ But although in these cases Equity did not follow the Law, yet it did not overturn or

¹ St. § 64.

² St. § 64 a; *Tollet v. Tollet*, 1 White & Tudor's Lead. Cas. Eq., 4th Am. ed. 227, *et seq.**

³ 21 Jac. 1, c. 16.

⁴ St. § 1521; 2 Sp. 62.

* Where forms are imposed on the execution of a power, the circumstances must be strictly adhered to, to constitute a good execution in Law (*Pepper's Will*, 1 Pars. Eq. 436), and the remedy to aid an imperfect execution is, in Chancery, only where it proceeds upon the ground of compelling parties, in respect of the consideration, to supply a defect in their acts. *Sinclair v. Jackson*, 8 Cowen, 544, 588.

And a Court of Equity will not enforce a voluntary contract or unexecuted gift. Where the transaction is incomplete, and there is no consideration, the Court will not complete what it finds imperfect. *Wadhams v. Gay*, 73 Ill. 415.

destroy the general application of the enactment. It only refused to apply it in particular instances where there were peculiar circumstances creating an equitable right to relief, demanding the interposition of the Court in its support, and capable of being enforced without at all derogating from the general application of the enactment in question. So far from derogating from the Statute, Equity was regulated by analogy to the Statute as to the precise time fixed for asserting equitable titles and claims to which the Statute did not apply.¹ 31.

Where an Act of Parliament has created a particular remedy at Law, the Court is not ^{Attachment of debts.} bound to create an analogous remedy in Equity, even where the remedy at Law is unavailable. And hence a judgment creditor cannot obtain a charge in Equity on an equitable debt, by analogy to an attachment of a legal debt under the Garnishee clauses of the Common Law Procedure Act, 1854.² 32.

V. It is a maxim that, *vigilantibus non dormientibus æquitas subvenit*: the meaning of which is, that Equity discountenances laches, and, independently of any Statutes of Limitation, has always refused to interfere where there has been gross laches in prosecuting rights, or long and unreasonable acquiescence in the assertion of

5. *Vigilantibus non dormientibus æquitas subvenit.*

¹ See St. § 64 a, 1520; 2 Sp. 60, 61. And for other illustrations of the qualifications of the rule above stated, see St. § 476, 480, and Title II, Chap. III, on Express Trusts, *infra*.

² *Horsley v. Cox*, L. R., 4 Ch. Ap. 92.

adverse rights.¹ And the mere assertion of a claim, unaccompanied by any act to give effect to it (as by taking legal proceedings to enforce it) will not avail to keep it alive.² In the case of laches, it would in many cases be impossible to interfere, without doing injustice to third persons who had acquired interests in the property during the intervening period. Thus, the right of a creditor to make legatees refund may be lost by laches.³ In general nothing can call forth a Court of Equity into activity but conscience, good faith, and reasonable diligence.⁴ "It has been beautifully remarked, with respect to the emblem of Time, who is depicted as carrying a scythe and an hour-glass, that while with the one he cuts down the evi-

¹ St. § 959 a, 1284 a, 1520; *Baker v. Read*, 18 Beav. 368; *Wright v. Vanderplank*, 2 K. & J. 1; *Alloway v. Braine*, 26 Beav. 575; *Robertson v. Norris*, 1 Gif. 421; *Gresley v. Mousley*, 1 Gif. 450; 4 D. & J. 78; *Bright v. Larcher* (No. 2), 4 D. & J. 608; *Harcourt v. White*, 28 Beav. 303; *Bright v. Legerton*, 2 D. F. & J. 606; *Blgrave v. Routh*, 8 D. M. & G. 620; *Laver v. Fielder*, 32 Beav. 1; *Hodgson v. Bibby*, 32 Beav. 221; *Downes v. Jennings*, 32 Beav. 290; *Wentworth v. Lloyd*, 32 Beav. 467; *Strange v. Fooks*, 4 Gif. 408; *McDonnel v. White*, 11 H. L. Cas. 570; *Barwell v. Barwell*, 34 Beav. 371; *Seagram v. Knight*, L. R., 3 Eq. 398.*

² *Clegg v. Edmonson*, 8 D. M. & G. 787.

³ *Ridgway v. Newstead*, 2 Gif. 492; *Lehman v. McArthur*, L. R., 3 Ch. Ap. 496.

⁴ 2 Sp. 60, 61.

* *Kane v. Bloodgood*, 7 Johns. Ch. 93; *Prevost v. Gratz*, 6 Wheat. 481; *Hughes v. Edwards*, 9 Wheat. 489; *McKnight v. Taylor*, 17 Peters, 197; s.c., 1 Howard Sup. Ct. 151; *Story Eq. Pleading*, § 813, 814; *Boone v. Chiles*, 10 Peters, 177; *Harrison v. Gibson*, 23 Grat. (Va.), 212.

dence which might protect innocence, with the other he metes out the period when innocence can no longer be assailed.”¹ 33.

VI. Where there is equal Equity, the law must prevail; in other words, if the defendant has a claim to the protection of a Court of Equity, equal to the claim which the plaintiff has to the assistance of the Court, there the Court will not interpose, but will leave the matter as it stands. It is upon this account that a Court of Equity refuses to interfere against a *bond fide* purchaser for a valuable consideration without notice of the adverse title, if he is in possession, or has purchased from an apparent owner in possession, and if he chooses to avail himself of the defence at the proper time and in the proper mode.² 34.

6. Where there is equal equity, the law must prevail.

VII. Another maxim is, that Equality is Equity, or, that Equity delighteth in Equal-

7. Equality is Equity.

¹ Bright v. Legerton, 2 D. F. & J. 617.

² St. § 64 c, 436; 2 Sp. 733; Basset v. Nosworthy, 2 Lead. Cas. Eq., 2d ed. 1, *et seq.*; Attorney-General v. Wilkins, 17 Beav. 285; Greenslade v. Dare, 20 Beav. 284; Lane v. Jackson, 20 Beav. 535; Colyer v. Finch, 5 H. L. Cas. 905, 920; Ogilvie v. Jeaffreson, 2 Gif. 353, 379; Clemow v. Geach, L. R., 6 Ch. Ap. 147; Pilcher v. Rawlins, L. R., 11 Eq. 53; reversed, L. R., 7 Ch. Ap. 259. See also Carter v. Carter, 3 K. & J. 617; Heath v. Crealock, L. R., 10 Ch. Ap. 33.*

* Newton v. McLean, 41 Barb. 285; Sugden on Vendors (7th edit.), Ch. 16, pp. 713, 757, 762, 763; Story Eq. Pl. § 603, 604, 805, 806. The general rule, that priority in point of time gives priority in point of right, is recognized by Courts of Equity, as well as by those of Common Law. Watson v. LeRoy, 6 Barb. So. C. 485; Boone v. Chiles, 10 Peters, 177. “In order, however, that

ity.¹ Acting on this principle, Equity leans strongly against joint-tenancy, as it is attended with the inseparable incident of the right of survivorship. For, although it is true that each joint tenant may have an equal chance of being the survivor, yet this is but an equality in point of chance ; as soon as one dies, there is an end to the equality between them ; on that event the whole accrues to the survivor. And the equal certainty of having an absolute equal share, or a share proportionate to the amount of the purchase-money advanced, which is an equal share so far as the justice of the case will permit, is considered in Equity far better than an equal chance of having the whole or none of the property purchased. The former is considered to be the true and just equality. And therefore, if two persons jointly purchase, or take a mortgage of an estate, and advance the purchase or mortgage money in unequal proportions, Equity, on the death of either of them, acting on the maxim that Equality is Equity, will hold the survivor a trustee for the representatives of the deceased, as to a share

Illustration drawn from the case of a joint purchase or mortgage.

¹ St. § 64 f.

this maxim may operate, it is essential that the equities be equal. If they are unequal the superior equity will prevail ; and such superiority may be acquired under any of the three following rules : (1.) The equity under a trust, or contract *in rem.*, is superior to that under a voluntary gift, or under a lien by judgment. (2.) The equity of a party who has been misled, is superior to his who has wilfully misled him. (3.) A party taking with notice of an equity, takes subject to that equity." Adams's Eq. 148.

proportionate to the amount of the money so advanced by him.¹ And this furnishes another illustration of the violation of the terms of the maxim, that Equity follows the Law, though not of the qualified and true sense of that maxim as above explained. 35.

VIII. Another maxim is, that he who comes into a Court of Equity must come with clean hands. So that if a person seeks to cancel, set aside, or obtain the delivery up of an instrument on account of fraud, and he himself has been guilty of wilful participation in the fraud, Equity will not interpose in his behalf, unless the fraud is against public policy, and public policy would be defeated by allowing it to stand.² 36.

8. He who comes into Equity must come with clean hands.

Illustration drawn from a fraudulent transaction.

The rule must be understood to refer to wilful misconduct in regard to the matter in litigation, as in the foregoing example, and not to any misconduct, however gross, which is unconnected with the matter in litigation, and with which the opposite party in the cause has no concern. 37.

Qualification of the maxim.

IX. It is also a maxim, that he who seeks equity, must do equity.³ 38.

9. He who seeks equity must do equity.

The meaning of this is, that he who seeks equity, must do equity in the transaction in respect of which relief is sought; for the rule does not reach

¹ See St. § 1206; *Lake v. Gibson*, 1 White & Tudor's Lead. Cas. Eq., 4th Am. ed. 264, *et seq.*

² See St. § 695.

³ St. § 64 c, 707; 1 Sp. 422.

so far as to affect any other transaction than that in respect of which the relief is sought.¹ 39.

Illustration
drawn from
a usurious
transaction.

To give an illustration of this maxim, a Court of Equity will not set aside a usurious transaction on a bill filed by the borrower, unless upon the terms that he will pay the lender what is *bond fide* due to him.^(a) It must not be inferred from this, however, that the Court will oblige the borrower to pay what is so due, on a bill filed by the lender to enforce his claim;² for that would be contrary to the maxim, that he who comes into Equity must come with clean hands. 40.

10. Equity
looks on
that as
done which
ought to be
done.

X. It is a maxim, that Equity looks upon that as done which ought to be done.³ This maxim is acted on in some cases (as in the case of agreements) in favor of persons who have a right to ask that acts might be done, so as virtually to place them, as near as may be, in the same advantageous position as if those acts had been done in the way in which, and at the time when, they ought to have been performed.⁴ 41.

¹ *Wilkinson v. Fowkes*, 9 Hare, 592; *Gibson v. Goldsmid*, 5 D. M. & G. 757.*

² See St. § 64. e.

³ 2 Sp. 253, *et seq.*

⁴ See St. § 64 g; 2 Sp. 264; and see Title II, Chap. VIII, *infra*.

* *Perry on Trusts*, § 626 *et seq.*; *Adams's Eq.*, note [191]; *Comstock v. Johnson*, 46 N. Y. 615.

(a) The usury laws are abolished by the stat. 17 & 18 Vict. c. 90, except those relating to pawnbrokers, and except as regards transactions prior to the 10th of August, 1854. But the repeal of the usury laws has not affected the right of the Court to give relief against unconscionable bargains. *Miller v. Cook*, L. R. 10 Eq. 641, 646; *Tyler v. Yates*, L. R. 11 Eq. 265.

As a consequence of this maxim, money directed to be employed in the purchase of land, and land directed to be turned into money, are in general regarded as that species of property into which they are directed to be converted,¹ that is, either immediately, or at some future time, according to circumstances.² And where the intention in marriage articles is plain, that a conversion should be made, but consents of the parties interested to the actual purchase cannot be obtained as required by the instrument, by reason of their deaths or for some other cause, if any convenient purchase could have been obtained, the Court will take upon itself to judge whether such consents ought to have been given, and the conversion being the paramount object, it will be considered as made. If this were otherwise, the parties to consent would have the option of determining whether the property should be real or personal, which, unless it be clearly given to them, will not be permitted. An equitable conversion of land into money, or of money into land, takes place by force of the direction, notwithstanding the conversion or investment is directed to be made with the approbation of certain parties; and legatees of legacies out of a property directed to be converted with the consent of the tenant for life in writing are entitled to their legacies, whether the property be converted or not; and the residuary legatees of the proceeds are entitled,

¹ 2 Sp. 256-8; and *infra*, Title II, Chap. VIII, § 4.

² 2 Sp. 258.

subject to the legacies, to the estate itself, if not converted.¹ 42.

Money devised or contracted to be laid out in land will pass under a devise of all the testator's messuages, lands, tenements, and hereditaments.² 43.

Real estate may be so constructively converted as to be liable to legacy duty.³ 44.

The persons to whom property directed to be converted is limited, and those who stand in their place, are entitled to enforce the conversion, either actually or virtually.⁴ But a stranger (such as the Crown or the lord claiming in default of heirs) is not entitled to call for a conversion.⁵ 45.

Where money to be converted gets into the hands of the person who is absolutely entitled to it either way, the operation of the rule of conversion will cease.⁶ 46.

Where the property is outstanding in a trustee, but there is some person who is absolutely entitled to the property, whether taken as realty or personalty, such person, by any act from which his intention may be collected, may declare his election in what quality it shall be taken.⁷ Until an election is made, the property passes as if actually converted, and the onus lies on those who would show an election to take it in

¹ 2 Sp. 260, 261.

² 2 Sp. 264.

³ 2 Sp. 267.

⁴ See 2 Sp. 268, 269.

⁵ 2 Sp. 266.

⁶ 2 Sp. 270.

⁷ 2 Sp. 271; *Fletcher v. Ashburner*, 1 White and Tudor's Lead. Cas. Eq., 4th Am. ed. 1118, *et seq.**

* *Craig v. Leslie*, 3 Wheaton, 564; *Peter v. Beverly*, 10 Peters, 534, 563.

another character than that it would have if converted.¹ 47.

Where one person has a better equity than another person in respect of the same property, in which each has an interest, the former has a right to call for an assignment or conveyance of the legal estate, and in Equity he will be placed in the same situation as if he had actually obtained a conveyance or assignment.² 48.

Person having a right to call for an assignment or conveyance treated as if he had obtained it.

Volunteers have equal equities among themselves; but a volunteer, though a wife or child, has not equal equity with a *bonâ fide* purchaser for a valuable consideration, even with notice of the claim of the volunteer.³ 49.

Equity of volunteers.

XI. As between persons having only equitable interests, if their equities are in all other respects equal, priority of time gives the better equity: *qui prior est tempore, potior est jure*. But in a contest between persons having only equitable interests, priority of time is the last preference resorted to; *i. e.*, a Court of Equity will not prefer the one to the other on the mere ground of priority of time, until it finds, upon an examination of their relative merits, that there is no other sufficient ground of preference between them, or, in other words, that their equities are in all other respects equal; and if the one has, on other grounds, a better equity than the other, priority of time is immaterial.⁴ 50.

11. *Qui prior est tempore, potior est jure.*

¹ 2 Sp. 272.

² 2 Sp. 728.

³ 2 Sp. 728.

⁴ Kindersley, V. C., in *Rice v. Rice*, 2 Drew, 78; *Stackhouse v.*

XII. Where a man is bound to do an act, and he does one which is capable of being considered to have been done in fulfilment of his obligation, it shall be so construed; because it is right to put the most favorable construction on the acts of others.¹ 51.

12. Equity imputes intention to fulfil an obligation.

In the case of a covenant, that, on the death of the covenantor, a wife or relative shall receive a gross sum, his or her distributive share, in the case of an intestacy, if equal to or greater than the sum covenanted to be paid, is to be considered as a performance; if less, as a part performance. But where the covenant is that an annuity shall be paid or secured on the death of the covenantor, the distributive share is not a performance or part performance.² And where the covenant debt arises in the lifetime of the covenantor (as where he covenants within two years after marriage to pay a certain sum, and he outlives the two years), a distribu-

Where a distributive share is a satisfaction of an obligation by covenant.

Countess of Jersey, 1 Johns. and H. 721; *Cory v. Eyre*, 1 D. J. & S. 149; *Shropshire Union Railways, etc., Co. v. The Queen*, L. R. 7 H. L. 496.*

¹ 2 Sp. 204; *Wilcocks v. Wilcocks*, 2 White and Tudor's Lead. Cas. Eq., 4th Am. ed. 833, *et seq.*; *Blandy v. Widmore*, id. 347.†

² Id.; 2 Sp. 608, 609.

* Adams's Eq. [160]; Equity looks at the substance of things. *Texas v. Hardenberg*, 10 Wall. 68. But if the party having the subsequent equity clothes himself with the legal title before he has notice of the prior equity such legal title will prevail. *Rexford v. Rexford*, 7 Lans. (N. Y.), 6.

† Adams's Eq. [104].

tive share will not be a performance or a satisfaction of the covenant.¹ 52.

XIII. It is a rule both at Law and in Equity, that whenever one of two innocent persons must suffer, he who, contrary to legal or moral obligation, has occasioned the loss, or enabled another to occasion the loss, must bear it. But the mere omission by a person to do something which it is not his duty to do, but which, if done, would have prevented the loss, is not sufficient to render him liable for such loss.² 53.

13. Loss must be borne by person occasioning it.

XIV. It may be observed in this place, that it is a rule, that although the property in controversy be situate in a country out of the jurisdiction of the Court, whether within the English dominions or not, yet the Court, in all cases where the proper parties are within the territorial process of the Court, will afford relief, so far as it can be afforded, by proceeding against the persons, and not directly against the property.³ Thus a bill cannot

14. Rules as to foreign or colonial property or contracts.

¹ 2 Sp. 609.

² See judgment of Lindley, J., in *Keith v. Burrows*, L. R. 1 C. P. D. 734.

³ See St. § 1299-1300, 1352 a; 2 Sp. 7; *Penn v. Lord Baltimore*, 2 White & Tudor's Lead. Cas. Eq., 4th Am. ed. 1806, *et seq.**

* The same principle has been asserted by the Supreme Court of the United States in its broadest form; and it has been held that in cases of fraud, of trust, or of contract, the jurisdiction of a Court of Equity is sustainable wherever the person may be found, although lands not within the jurisdiction of that Court may be affected by the decree. St. Eq. Jur. § 1297; *Massie v. Watts*, 6 Cranch, 160; *Moore v. Jaeger*, 2 MacArthur, 465.

be brought for a partition of land situate in a country out of the jurisdiction; for the Court cannot award a commission there.¹ But a bill may be maintained for an account of the rents and profits of land out of the jurisdiction, or for a specific performance of an agreement respecting such land.² And a foreclosure decree being a decree *in personam*, depriving the mortgagor of his personal right to redeem, the Court has jurisdiction to make such a decree between an English mortgagor and mortgagee of land in one of the colonies.³ And the Court has gone so far as indirectly to overhau the judgments of foreign Courts, and even the sales made under those judgments, where fraud has intervened in those judgments, or a grossly inequitable advantage has been taken.⁴ But a plea of fraud was a good defence at Law to an action on a foreign judgment, and therefore the Court of Chancery would not interfere with the action at Law, on the ground that such judgment was obtained by fraud.⁵ 54.

If a matter is within the jurisdiction of a tribunal of competent jurisdiction in another country, a Court of Equity, except under special circumstances, will leave the matter to be disposed of by that tribunal.⁶ 55.

The right to personal property follows the domicile,

¹ St. § 1292; 2 Sp. 8, n (d).

² St. § 1291, 1300, 743, 744.

³ Paget v. Ede, L. R. 18 Eq. 118.

⁴ St. § 1294; 2 Sp. 9.

⁵ Ochsenbein v. Papelier, L. R. 8 Ch. Ap. 695.

⁶ 2 Sp. 10.

but the right to land or immovable property is to be determined by the law of the country where it is situate. Yet if that question is mixed up with others—for instance, with matters of account, which can be more conveniently disposed of here—the Court will entertain jurisdiction of the whole matter, giving directions, in case of need, for instituting any proceedings in the Colonial Courts.¹ 56.

The remedy upon contracts must be that which is given by the law of the country where the parties reside.² But contracts are generally construed according to the law of the place in which they were made. And, as a general rule, a contract will not be enforced unless it is valid both by the law of the country in which it was made, and by the law of the country in which it is sought to be enforced.³ 57.

Where a written contract is made in a foreign country and in a foreign language, an English Court, in order to interpret it, must first obtain a translation of the instrument; secondly, an explanation of the terms of art (if it contains any); thirdly, evidence of any foreign law applicable to the case; and fourthly, evidence of any peculiar rules of construction, if any such rules exist, by the foreign law. And, with this

¹ 2 Sp. 12; see *Bailee v. Bailee*, L. R. 5 Eq. 175.

² 2 Sp. 14.

³ 2 Sp. 13, 14; *Hope v. Hope*, D. M. & G. 731.*

* *Story's Conf. Laws*, § 544, 545. Though a Court of Equity cannot act directly on land not within its jurisdiction, it may compel the holder of the title, who is a party before it, to give effect to a lien. *Lewis v. Darling*, 16 How. Sup. Ct. 1.

assistance, the court must then interpret the contract itself on ordinary principles of construction.¹ 58.

15. Inter-
ference of
Courts of
Law with
the deci-
sions of
Courts of
Equity.

XV. "If a person has sustained injury in consequence of any order or proceeding of a Court of Equity, or by reason of anything which has occurred in the execution of its process, he must seek redress there, and not in a Court of Law. If the matter complained of involves a question of the jurisdiction of equity, or of the validity or effect of its order or process, it will never allow such a question to be carried for decision to a Court of Law; but if, admitting the jurisdiction of the Court and the validity of its order, redress is sought merely in respect of some irregularity or excess in the execution of its order, it will, at its discretion, either itself give redress to the aggrieved party, or permit him to proceed at Law, as justice and convenience may require."² 59.

¹ *Di Sora v. Phillipps*, 10 H. L. Cas. 624, 633.

² *Walker v. Micklethwait*, 1 Dr. & Sm. 49.

SECTION IV.

OF THE DIVISION OF EQUITY.

THE subject of Equity Jurisprudence may be conveniently, and perhaps most properly, treated under the following heads, designated according to the more distinctive characteristics of the relief afforded, or the general objects sought to be effected.

- I. Of Remedial Equity, specifically so termed.
- II. Of Executive Equity.
- III. Of Adjustive Equity.
- IV. Of Protective Equity, irrespective of disability.
- V. Of Protective Equity, in favor of persons under disability. 60.

TITLE I.

Of Remedial Equity, specifically so termed.

CHAPTER I.

OF ACCIDENT.

AN accident, in the usual sense of the term, is an occurrence not referable to design. 61.

Accident, as remediable in Equity, may be defined to be an unforeseen and injurious occurrence, not attributable to mistake, neglect, or misconduct. 62.

Definition
of accident.

Thus, the reduction, by Act of Parliament, of public stock directed by will to be set apart to answer an annuity, is an accident, remediable in Equity by decreeing the deficiency to be made up against the residuary legatees.¹ 63.

Illustration in the case of a reduction of stock.

I. There are many cases of accident in which due relief could always be obtained at Law; and there Equity would not interpose.² 64.

I. Accidents remediable at Law.

II. On the other hand, there are many cases in which no remedy can be had either at Law or in Equity.³ 65. Thus,

II. Accidents not remediable at Law or in Equity,

1. No relief will be granted where the accident arose from the gross neglect or fault of the party seeking relief, or his agents.⁴ 66.

As in cases of culpability of the sufferer:

¹ St. § 93.

² St. § 79.

³ St. § 79.

⁴ St. § 105.

2. And where a person has expressly and absolutely contracted or covenanted to do a particular thing, it is no ground for the interference of a Court of Equity, that he has been prevented by accident from fulfilling his engagement, or from deriving the full benefit of the contract on his side. For he might have prevented any injury to himself from accident, by making proper exceptions, but since he has made no such exceptions, Equity will not conjecturally limit a liability which in terms is general and unqualified.¹ So that if a lessee covenants to keep the demised premises in repair, he will be bound to do so, notwithstanding any unavoidable accident by which they are destroyed or injured.² And where there is a covenant to pay rent during the term, without any exceptions, it must be paid, notwithstanding the premises are accidentally burnt down during the term.³ So, if an estate is sold for a certain sum of money and an annuity for the life of the vendor, and the vendor dies before the receipt of any annuity, Equity will not grant relief.⁴ And an antenuptial settlement cannot be set aside, reformed, or varied, on the ground that it was intended that there should be a pecuniary consideration on both sides, whereas the pecuniary consideration on one side has failed.⁵ 67.

3. Nor will relief be granted in favor of a person whose equitable right to assistance is not equal, or not more than equal to the

Or of an
absolute
agreement,

To repair,

Or to pay
rent,

Or of an an-
nuity:

Or of failure
of the con-
sideration:

Or of a coun-
tervailing
equity:

¹ See St. § 101-5. ² St. § 101. ³ St. § 102. ⁴ St. § 104.

⁵ Campbell v. Ingilby, 21 Beav. 567; 1 D. & J. 393.

equitable right to protection which is possessed by the party against whom the relief is sought. For this reason relief is not given against a *bond fide* purchaser for valuable consideration, without notice;¹ or against an heir in tail or remainder-man in tail, in favor of persons claiming under the tenant in tail.² 68.

4. And so relief will not be granted in favor of a person, who, although a great loser through an accident, has no equitable title to relief, or as little as the person against whom relief is sought. Thus, no relief will be afforded to the legatees or devisees under a will defectively executed:³ for, being mere volunteers, they have as little equity as the heir or next of kin, or even less, inasmuch as *fortior et æquior est dispositio legis quam hominis* (Co. Litt., 338 a), and therefore the legal right which has vested in the latter will not be taken away; as the maxim is, that "where the equity is equal the law must prevail." 69.

Or of want of equity:

As where a will is defectively executed.

III. But where a Court of Law cannot, or, in similar cases, originally could not, or did not, give adequate relief, and take due care of the rights of all persons interested, and the party prejudicially affected is free from blame in respect of the accident, and has a conscientious title to relief, it will be granted by a Court of Equity, if it can be granted without derogating from any positive agreement, or violating any equal or superior equity in another person.⁴ 70.

III. Accidents remediable in Equity.

¹ See St. § 108.

² St. § 107.

³ See St. § 105 a, 106.

⁴ See St. § 28, 64 i, 79, 81, 85, 89, 101, 105, 106, 109.

1. Jurisdiction for discovery in cases of destroyed, lost, or suppressed deeds, and

1. In cases of destroyed, lost, or suppressed deeds, the jurisdiction of Equity, to compel a discovery, would seem to have been universal, because this was a preliminary assistance peculiar to Equity. And where a discovery only was sought, Equity would grant it without any affidavit of loss; because a person would not file a mere bill of discovery, unless the instrument were really lost. 71.

Jurisdiction for relief in such cases.

But, in these cases, the jurisdiction for relief, in addition to a discovery, was of limited extent; for, in some of these cases, Courts of Law have all along been able to administer, and have been in the habit of doing, complete justice.¹

Requisites to maintain the jurisdiction for relief in such cases.

And where such relief was sought in a Court of Equity an affidavit of the fact of destruction, loss, or suppression must have been annexed to the bill; because, in such cases, it was desired to change the forum from a Court of Law, which *prima facie* was the proper forum, to a Court of Equity; and therefore an affidavit ought to be required, to prevent an abuse of the process of the Court. There must also have been an offer of indemnity in the bill when the nature of the case seemed to require it.² And in order to maintain the suit, it was further indispensable that the destruction, loss, or suppression, if not admitted by the answer, should be established, at the hearing of the cause, by satisfactory proofs.³ 72.

¹ St. § 83, 84.

² See St. § 83; Mitford & Tyler's Pleadings, 209, 218, 219.

³ See St. § 88.

Among other instances in which Equity exercises jurisdiction for relief in the case of destroyed, lost, or suppressed deeds, relief will be given in Equity where the plaintiff avers that a deed relating to land has been either destroyed or concealed by the defendant, but he (the plaintiff) knows not whether it has been so destroyed or whether it has been only concealed; for, there a Court of Equity will make a decree (which a Court of Law formerly could not), that the plaintiff shall hold and enjoy the land until the defendant shall produce the deed, or admit its destruction.¹ 73.

Instances in which Equity has jurisdiction for relief in those cases.

So if a deed concerning land is lost, and the party in possession seeks a discovery, and to be established in his possession under it, Equity will afford relief.² 74.

2. A person may also come into Equity for payment of a lost bond; because until a recent period, no relief was given at Law, on account of a want of a profert.³ And besides, at Law, the defendant had not the protection of the oath of the plaintiff to the fact of the loss. Again, it is often proper to grant relief upon the terms of the party giving a bond of indemnity; and formerly a Court of Law could not insist on that as a part of the judgment; and, although it has sometimes required the previous offer of an indemnity, yet such an offer may be unsatisfactory in many cases; for, in the meantime, the circumstances of the party to the bond of indemnity may undergo a great change.⁴ 75.

2. Jurisdiction in cases of lost bonds.

¹ St. § 84.

² St. § 84.

³ St. § 81, 82.

⁴ St. § 82.

TITLE I.

Of Remedial Equity, specifically so termed.

action;¹ or both parties were under the impression that one of them was the owner of property which in reality belonged to the other;² or one of the parties made a material misrepresentation, though innocently, which influenced the other.³ 87.

III. In the case of a compromise of doubtful rights, or of rights which are considered by the parties to be doubtful, to make it binding, the parties must be at arm's length, on equal terms, with equal knowledge, and with sufficient advice and protection where, from their relative position or other circumstances, they need it.⁴ If all the parties are in a state of mutual ignorance, or they are all acquainted with the doubts which exist in their favor, the compromise will be binding. But where one or more of them is or are not aware of the doubts existing in his or their favor, while the fact that such doubts exist is known to the other or others of them, the compromise will not be binding,⁵ because in that case there is room

III. Compromises.

¹ *Cochrane v. Willis*, 34 Beav. 359; L. R. 1 Ch. Ap. 58.*

² *Cooper v. Phibbs*, L. R. 2 H. L. 149.

³ *Fane v. Fane*, L. R. 20 Eq. 698.

⁴ *Moxon v. Payne*, L. R. 8 Ch. Ap. 881, 885.

⁵ See St. § 130-2; *Lucy's Case*, 4 D. M. & G. 356; *Stapilton v. Stapilton*, 2 White & Tudor's Lead. Cas. Eq., 4th Am. ed. 824, *et seq.*†

* *Allen v. Hammond*, 11 Peters, 63, 71-73.

† Where the parties have equal means of knowledge, no relief in Equity will be afforded, on the ground of results being different from what the parties anticipated. St. Eq. Jur. § 118. And if it should subsequently appear that the parties were mistaken in their apprehension of their rights, that alone will not affect the validity of any compromise or contract, based upon such misapprehension. *Union Bank of Georgetown v. Geary*, 5 Peters, 96.

for the presumption of surprise or confidence abused; and the very nature of the transaction made it requisite that all the parties should be on an equality as regards knowledge or ignorance of the doubts existing in their favor. To render a family compromise binding, there must be an honest disclosure, by each party to the other, of all such material facts known to them, relative to their rights and title, as are calculated to influence the judgment in the adoption of the compromise; and any advantage taken by either of the parties of the known ignorance of the other as to such facts, renders such compromise void in Equity.¹ 88.

IV. Where by mistake an instrument *inter vivos* is not what the parties intended, or there is a mistake in it other than a mistake in Law, or any acts necessary to give validity to the instrument have been omitted, and the mistake is clearly made out by admissible and satisfactory evidence, or is admitted on the record, or is evident from the nature of the case, or from the rest of the deed, Equity will rectify the mistake;² except

IV. Correction of a mistake in a written instrument or in regard thereto.

¹ *Smith v. Pincombe*, 3 Mac. & G. 659; *Greenwood v. Greenwood*, 2 D. J. & S. 28; *Brooke v. Lord Mostyn*, 2 D. J. & S. 373.

² St. § 152, 157, 159, 166, 168; and see Sugd. V. & P., 10th ed., ch. 3, sect. 11, pl. 2; *Lord Glenorchy v. Bosville*, and *Legg v. Goldwire*, 1 Lead. Cas. Eq., 2d ed. 1, *et seq.*; *Meadows v. Meadows*, 16 Beav. 401; *Murray v. Parker*, 19 Beav. 305; *Torre v. Torre*, 1 Sm. & Gif. 518; *In re Morse's Settlement*, 21 Beav. 174; *Wright v. Goff*, 22 Beav. 207; *Wolterbeck v. Barrow*, 23 Beav. 423; *Wilson v. Wilson*, 5 H. L. Cas. 40, 52-7, 59, 63, 71; *Mostyn v. Mostyn*, 5 H. L. Cas. 155; *Fowler v. Fowler*, 4 D. & J. 250; *Earl of Bradford v. Earl of Romney*, 30 Beav. 431; *Garrard v.*

as against a *bond fide* purchaser for valuable consideration, without notice,¹ or other person having an Equity equal to that of the plaintiff,² such as the issue in tail, or a remainder-man in tail, where there is no Equity to affect the conscience of such issue or remainder-man.³ 89.

But in order to enable the Court to rectify an antenuptial settlement by striking out a part, it must be proved that it contains something which has been inserted by mistake, contrary to the intention of all the parties.⁴ And where an instrument is substantially what the parties intended, although so framed under a mistaken view of the Law, the court will not rectify the mistake.⁵ A bond to leave or convey property

Frankel, 30 Beav. 445; Walker v. Armstrong, 8 D. M. & G. 531; Daniel v. Arkwright, 2 Hem. & Mil. 95; Earl of Malmesbury v. Countess of Malmesbury, 31 Beav. 407; Scholefield v. Lockwood (No. 2), 32 Beav. 436; Harris v. Pepperell, L. R. 5 Eq. 1; Druiff v. Lord Parker, L. R. 5 Eq. 131; Brooke v. Haymes, L. R. 6 Eq. 25; In re De La Touche's Settlement, L. R. 10 Eq. 599; Smith v. Iliffe, L. R. 20 Eq. 666; Cogan v. Duffield, L. R. 20 Eq. 789; In re Boulter, Ex parte National Provincial Bank, L. R. 4, Ch. D. 241.*

¹ St. § 165; 2 Sp. 195.

² St. § 176.

³ St. § 178.

⁴ Rooke v. Lord Kensington, 2 K. & J. 753, 764; Sells v. Sells, 1 Dr. & Sm. 42; Thompson v. Whitmore, 1 Johns. & H. 268; Elwes v. Elwes, 2 Gif. 545; 3 D. F. & J. 667.†

⁵ St. § 113-115.

* Bradford v. The Union Bank, 13 How. Sup. Ct. 66; McIntosh v. Saunders, 68 Ill. 128; Graves v. Boston Marine Ins. Co., 2 Cranch, 442, 444; Lyman v. United Ins. Co., 2 John's Ch. 630; Adams's Eq. [168], and cases cited.

† Mitchell v. Mitchell, 40 Ga. 11.

has, however, been sometimes upheld in Equity, as an agreement defectively executed.¹ 90.

A husband cannot take proceedings to have a settlement rectified where he executed it with a knowledge of its contents, though he gave notice before the marriage that he should apply to the Court to have it rectified.² 91.

A Court of Equity will not remedy a defect or supply an omission in a deed in favor of a stranger where there is no consideration, even in the plainest case, and even when it has arisen from mere mistake, and though the correction would not be inconsistent with the deed.³ 92.

A voluntary deed cannot be reformed except with the consent of the donor.⁴ 93.

It should be observed that where the final instrument of conveyance or settlement differs from the preliminary contract, that very circumstance affords of itself some ground for presuming an intentional change of purpose, unless, from some recital in it or from some attendant circumstances, it appears to have been intended to be merely in pursuance of the original contract.⁵ 94.

¹ St. § 136. ² *Eaton v. Bennett*, 34 Beav. 196. ³ 2 Sp. 886.

⁴ *Phillipson v. Kerry*, 32 Beav. 628; *Broun v. Kennedy*, 33 Beav. 133, 147. But see *Thompson v. Whitmore*, 1 Johns. & H. 268.*

⁵ St. § 160.

* The Courts of Equity will not rectify a voluntary deed unless *all the parties* consent. St. Eq. Jur. § 164 e, and cases there cited.

When there are articles and a settlement before marriage, as a general rule the settlement alone can be looked to; if it is different from the articles, it must be taken as a new agreement. But if it purports to be executed in pursuance of the articles, or if there is clear and satisfactory evidence showing that the discrepancy has arisen from a mistake, the Court will reform the settlement, and make it conformable to the real intention of the parties.¹ If the articles are before marriage and the settlement after marriage, the articles are in effect the binding instrument; and if the settlement gives estates or interests different from those which the Court would give on the construction of the articles, the settlement will be reformed, as between the parties and their representatives and mere volunteers, but not as against a purchaser for valuable consideration without notice.² 95.

And as regards the admissibility of the evidence, it is a rule of the Common Law, independently of the Statute of Frauds, that parol evidence is not admissible to disannul, substantially add to, subtract from, qualify, or vary a written instrument.³ But upon principle it would seem that cases of accident, mistake, and fraud, are (in many instances, at least) to be deemed, in Equity, exceptions to this rule.⁴ 96.

¹ 2 Sp. 140; *Bold v. Hutchinson*, 5 D. M. & G. 558, 568.*

² 2 Sp. 140, 141; *Peachy on Settl.* 132.

³ See St. § 153, 158; and see also *Sugd. V. & P.*, 10th ed., ch. 3, sect. 8, pl. 2, 26, 33, etc., and sect. 11, pl. 5.

⁴ St. § 155, 156, 161, notes: remarks of Sir J. Romilly, M. R., in *Murray v. Parker*, 19 Beav. 398.

* St. Eq. Jur. § 160, and notes.

V. Where an instrument is so general in its terms as to release the rights of a party to property, to which he was wholly ignorant that he had any title, and which was not within the contemplation of the bargain, the Court confines the release to what was intended to be released.¹ 97.

VI. Equity will relieve where an instrument has been delivered up or cancelled, under a mistake of a party, and in ignorance of the facts material to the rights under it.² 98.

VII. Equity will also supply defects in the execution of powers, on the ground of mistake, in the cases mentioned in the preceding chapter under the head of Accident. 99.

VIII. Equity will rectify a clear mistake or omission in a will, if it is apparent on the face of the will. But parol evidence is generally inadmissible. It is admitted, however, in certain cases of mistake in the name or description of the devisee or legatee.³ 100.

IX. Equity will grant relief, where a mistake in a written contract is fairly presumable from the nature of the transaction. And hence, where there has been a joint loan to two or more obligors, and they are only

¹ St. § 145.

² St. § 167.

³ See 1 Jarm. on Wills, 2d ed. 361-3; Wigram on Wills, 51; *Mostyn v. Mostyn*, 5 H. L. Cas. 155; St. § 179-181; *Doe d. Hiscocks v. Hiscocks*, Tud. Lead. Cas. Real Prop., 2d ed. 819.*

* 1 Redf. on Wills (3d ed.), 509, 591; *Salmon v. Stuyvesant*, 16 Wend. 321.

made jointly liable, the Court will make the bond joint and several.¹ 101.

X. An instrument may be entirely set aside on the ground of mistake or fraud.² And a voluntary deed of gift may be ordered to be cancelled on either of those grounds, and the money ordered to be given back to the donor.³ And in cases within the Statute of Frauds, it is an easier matter totally to avoid an agreement than to vary it; for, in the former case, the Statute of Frauds has no influence whatever; since "it does not say that a written agreement shall bind, but that an unwritten agreement shall not bind."⁴ 102.

¹ St. § 163, 164; *Wilson v. Wilson*, 5 H. L. Cas. 40.*

² See St. § 161; *Phillipson v. Kerry*, 32 Beav. 628; *Price v. Ley*, 4 Gif. 235.

³ *Lister v. Hodgson*, L. R. 4 Eq. 30.

⁴ *Sugd. V. & P.*, 10th ed., ch. 3, s. 8, pl. 32.

* In all cases of mistake in written instruments, Courts of Equity will interfere only as between the original parties, or those claiming under them in privity; such as personal representatives, heirs, devisees, etc.

As against *bonâ fide* purchasers for a valuable consideration without notice, Courts of Equity will grant no relief; because they have, at least, an equal equity to the protection of the Court. *St. Eq. Jur.* § 165, and cases there cited.

CHAPTER III.

ON ACTUAL FRAUD.

THE modes of fraud are infinite ; and " it has been said, that Courts of Equity have, very wisely, never laid down, as a general proposition, what shall constitute fraud, or any general rule beyond which they will not go, upon the ground of fraud, lest other means of avoiding the equity of the Courts should be found."¹ In accordance with the spirit of this remark, the writer abstains from attempting to give a definition of fraud *in general*. It is usually and accurately divided, however, into two large classes, designated, defined, and treated of under the names of Actual Fraud and Constructive Fraud. 103.

Unsafe to define fraud *in general* or the extent of remedial equity on the ground of fraud.

An actual fraud may be defined to be something said, done, or omitted, by a person with the design of perpetrating what he must have known to be a positive fraud. 104.

Definition of actual fraud.

A Court of Equity will not entertain jurisdiction to set aside a will obtained by fraud, or establish a will suppressed by fraud ; for in such cases, the proper remedy is exclu-

Jurisdiction in cases of fraud.

¹ St. § 186.

sively vested in the Court of Probate.¹ But where the fraud does not go to the whole will, but only to some particular clause, or where the fraud is in unduly obtaining the consent of the next of kin to the probate, Courts of Equity will lay hold of these circumstances to declare the executor a trustee for the next of kin.² 105.

In a great variety of other cases, fraud is cognizable at Law, as in cases of fraud in the sale of chattels personal; and in some of these cases adequate relief could be, and constantly is, obtained at Law.³ 106.

It is a rule as well in Courts of Law as ^{Evidence of fraud.} in Courts of Equity, that fraud is not to be presumed. But, on the other hand, neither at Law nor in Equity is positive proof of fraud indispensably necessary. A Court of Equity, however, will act on a lower degree of proof than that which would be required in a Court of Law.⁴ 107.

When a case is based on fraud, the fraud must be proved, and no relief will be given in the suit in which such a case is made, on any different grounds. But where material allegations of fraud are proved, the

¹ St. § 184, and note; 1 Wms. on Executors, 5th ed. 341; 2 Steph. Com. 202-5; Jones v. Gregory, 4 Giff. 468; 2 D. J. & S. 83.*

² St. § 440. ³ St. § 184, and note.† ⁴ See St. § 190.

* The American decisions on this subject have followed the English authorities. See Broderick's Will, 21 Wall. 503; Gaines *et ux. v. Chew et al.* 2 How. Supt. Ct. 619, 645, 646, and cases considered by Mr. Justice McLean in the opinion.

† Bigelow on Fraud, 322, *et seq.*

plaintiff will obtain relief although other allegations of fraud are not proved.¹ 108.

It would be impossible, and unnecessary if it were possible, to enumerate all the different instances in which Courts of Equity will grant the relief on the ground of actual fraud. We shall only notice a few of them under these two heads: 109.

Division of actual frauds. I. Of frauds which receive that denomination from a consideration of the conduct of the guilty parties, irrespective of any peculiarity in the condition of the injured parties. 110.

II. Of frauds which receive that denomination mainly or in a great measure from a consideration of the peculiar condition of the parties upon whom they are practiced. 111.

I. First class of actual frauds. I.—1. Misrepresentation, whether by word or deed, constitutes fraud.² Equity will not interfere, however, if the fraud was not in the transaction which creates the contract, but in a distinct unconnected transaction.³

1. Misrepresentation. Nor will it interfere if the misrepresentation was in a trifling or immaterial point, or if no injury arose from it.⁴ For, in the first case, the evils of litigation would

¹ *Moxon v. Payne*, L. R. 8 Ch. Ap. 881, 887.

² St. § 191, 192; *Jennings v. Broughton*, 5 D. M. & G. 126; *Kay v. Smith*, 21 Beav. 522.

³ *Rolt v. White*, 3 D. J. & S. 360.

⁴ St. § 191, 195, 196, 203; *Pulsford v. Richards*, 17 Beav. 96.*

* Nor where parties have equal means of information. *Brown v. Leach*, 107 Mass.

be far greater than the injury occasioned ; and, as to the second case, Courts of Equity do not profess to punish guilt, but to redress wrongs. And Equity will not interfere if the party was not misled by the misrepresentation ;¹ because, in that case, he was not injured by it. Nor will the Court interpose if the misrepresentation was vague and inconclusive,² or if it merely amounted to the common language of puffing and commendation of things sold ;³ or if it was in a matter of opinion or fact equally open to the inquiry of both parties, and in regard to which neither could be presumed to trust the other ;⁴ or if the party injured may properly impute the loss to a want of ordinary care or discretion on the part of himself or his agents.⁵ For the Court does not sit to redress injuries which the injured parties, by ordinary and proper care, could have prevented. It is no part of Equity Jurisprudence to encourage carelessness. So great, however, is the confidence which is naturally reposed by a client in his solicitor, and so important is it to guard against abuse, that, where a solicitor induces his client to execute a deed upon false and plausible representations, the Court will order the deed to be delivered up to be cancelled.⁶ 112.

¹ St. § 202; *Nelson v. Stocker*, 4 D. & J. 458.

² St. § 192.

³ St. § 291.

⁴ St. § 191, 197, 198.

⁵ St. § 199, 200 a ; but see *Reynell v. Sprye*, 1 D. M. & G. 656, 710.

⁶ *Vorley v. Cooke*, 1 Gif. 230 ; *Ogilvie v. Jeaffreson*, 2 Giff. 353.*

* But a client may make an irrevocable gift to his attorney with reference to particular services pending or prospective, but the

Misrepresentation is a ground of relief, whether the party who made the assertion or intimation knew it to be false, or made it without knowing whether it was true or false.¹ So that if a person, whether wilfully or not, makes a false representation to another, with a reasonable ground for supposing that he or a third person would act upon such representation, and he or such third person does act upon it, and is misled thereby, the person misleading will be made answerable for it.² And where a person has been induced to enter into a contract by a material misrepresentation of the other party, he is entitled to have the contract set aside, and not merely to have the representation made good.³ 112 a.

A contract induced by fraud is not void, but only voidable at the option of the party defrauded; and though the party who was guilty of the fraud cannot enforce it, yet other persons may, in consequence of it,

¹ St. § 193; *Pulsford v. Richards*, 17 Beav. 95; *Rawlins v. Wickham*, 1 Gif. 355; 3 D. & J. 304; *Reese River Silver Mining Co. v. Smith*, L. R. 4 H. L. 64.*

² *Hutton v. Rossiter*, 7 D. M. & G. 9, 23, 24; *Slim v. Croucher*, 2 Gif. 37; 1 D. F. & J. 518; *Barry v. Croskey*, 2 Johns. & H. 1; *Ramshire v. Bolton*, L. R. 8 Eq. 294.

³ *Rawlins v. Wickham*, 1 Gif. 355; 3 D. & J. 304; *Trail v. Baring*, 4 Gif. 485; *Charlesworth v. Jennings*, 34 Beav. 96; *Haygarth v. Wearing*, L. R. 12 Eq. 320.

mere existence of the relation raises a presumption against the validity of the gratuity. See *Bigelow on Fraud*, 195, 196, and cases cited. St. Eq. Jur. § 311.

* *Sharp v. Mayor*, 40 Barb. 256.

acquire interests and rights which they may enforce against the party defrauded.¹ 113.

If a person, through the fraud of another, has executed a deed, or signed a receipt, containing a representation, he must suffer from the fraudulent use made of such deed or receipt by such other person, rather than a third person who has, in the ordinary course of business, without negligence or default, trusted to the document containing such representation.² 114.

A person may avail himself of what has been obtained by the fraud of another, if he is not only innocent of the fraud but has given some valuable consideration.³ 115.

2. If a person conceals facts and circumstances which he is under some legal or <sup>Conceal-
ment.</sup> equitable obligation to communicate to the other, it amounts to a fraud for which Equity will grant relief.⁴ As, if a vendor sells an estate, knowing that he has no title to it, or that there are incumbrances on it, of which the purchaser is ignorant;⁵ or if the insured does not communicate to the underwriters all facts and circumstances which increase the risk.⁶ 116.

And if a person leases lands, and he knows, and the

¹ *Oakes v. Turquand*, L. R. 2 H. L. 325, 346.

² *Hunter v. Walters*, L. R. 7 Ch. Ap. 75.

³ *Scholefield v. Templer*, 4 D. & J. 433; *Hunter v. Walters*, L. R. 7 Ch. Ap. 75.

⁴ St. § 204, 207, 215, 217, 220; 2 Sp. 765; *Pulsford v. Richards*, 17 Beav. 94-6.*

⁵ St. § 208.

⁶ St. § 216.

* See *Etting v. Bank of the United States*, 11 Wheaton, 59.

lessee does not know, that as to a part the lessor has no title, and the lessor does not disclose that fact, the lessee may set aside or repudiate the lease. And he may refuse the part to which there is no title, and elect to keep the remainder. And if there is a covenant for title, express or implied, and an action is brought for rent, he may claim damages, for breach of the covenant, by way of counterclaim.¹ 117.

But a purchaser is not bound to communicate his knowledge of the value of the property to the vendor;² for it is the business of the vendor to know and sufficiently to estimate the worth of his own property. Thus, if A, knowing that there is a mine in the land of B, of which he knows B to be ignorant, should conceal his knowledge of the fact, and enter into a contract to purchase the estate of B, for a price which the estate is worth without considering the mine, the contract would be good.³ 118.

In many cases, the maxim *caveat emptor* is applied; and unless there is some misrepresentation or artifice to disguise the thing sold, or some warranty as to its character or quality, the purchaser is bound, notwithstanding there may be material intrinsic defects in it known to the vendor, and unknown to the purchaser.⁴ 119.

¹ *Mostyn v. West Mostyn Company*, L. R. 1 C. P. D. 145.

² St. § 207, note; *Walters v. Morgan*, 3 D. F. & J. 718.*

³ St. § 205.

⁴ St. § 212.†

* See Kent. Comm. Lect. 39, p. 478, 479 (4th ed.).

† 2 Blackst. Comm. 451.

In foro conscientie, each party is bound to communicate to the other his knowledge of all material facts, not discoverable by the other, or of which he knows the other to be ignorant. For this is required by the golden maxim, that we should do unto others as we would that they should do unto us. But if Equity were to attempt to enforce the observance of so broad a rule, a far greater inconvenience would ensue than that which is now experienced. For it would often be a matter of doubt with the party wronged, whether the other was really aware of the defect or advantage which he did not disclose. And, frequently, that could only be ascertained from his admissions or denials in a suit. So that, in order to determine this, proceedings for relief against fraud would often be taken in total uncertainty as to the existence of that knowledge, which was of the very essence of the supposed fraud, and absolutely necessary to be proved before any ground for relief could be said to exist. And in many cases there would be the same difficulty in ascertaining whether the defect or advantage, admitting it to be known to the one party, was or was not disclosed by him to the other. 120.

To draw a distinction which would, perhaps, give as much effect to the principle of sound morals, as would be compatible with avoiding frequent and fruitless litigation, and the encouragement of carelessness and negligence, the true course would seem to be, to hold that Equity will grant relief, if a person does not disclose any material fact, which, from the nature of the case, he must have known, and which the other

party could not be expected to discover with the care ordinarily used in similar transactions. 121.

3. Inadequacy. 3. Mere inadequacy of price, or any other inequality in the bargain, does not constitute by itself a ground to avoid it.¹ For the value of things is always fluctuating, and dependent on numberless circumstances. Besides, a man may be induced by difficulties or exigencies, or for other reasons, to part with his property at a particular time, for less than that for which another would have sold it.² And perhaps the lowness of the price may have been the only inducement to the purchaser to make the purchase; and he may have simply accepted the proposals of the vendor, instead of being the originator of the transaction, or of being actively concerned in negotiating it, like a man whose design is to gain a fraudulent advantage over another. 122.

Still, however, there may be such an unconscionableness or inadequacy in the bargain, as to shock the conscience, and amount to conclusive evidence of imposition or some undue influence; and in such a case, Courts of Equity will interfere on the ground of fraud. And where there are other ingredients of a suspicious nature, gross inadequacy must furnish the most vehement presumption of fraud.³ As, if proper time for

¹ St. § 244; *Abbott v. Swooner*, 4 De G. & S. 448; *Harrison v. Guest*, 6 D. M. & G. 424.*

² St. § 545.

³ St. § 246, see remarks of Lord Cranworth, C., in *Harrison v. Guest*, 6 D. M. & G. 424.†

* *Erwin v. Parham*, 12 How. Sup. Ct. 197.

† *Wright v. Wilson*, 2 Yerger, 294.

deliberation is not allowed the party injured ; if he is importunately pressed ; if those in whom he placed confidence make use of strong persuasion ; if he is suddenly drawn into an act, without being fully aware of the consequences ; if he is not permitted to consult disinterested friends or counsel, before he is called upon to act, in circumstances of sudden emergency or unexpected right and acquisition ; if he is an illiterate person, and advantage has been taken of his necessities ; or if he is a person of weak understanding.¹ But Equity will not relieve where the parties cannot be placed in *status quo*. Such relief, for instance, will not be given in the case of marriage settlements ; inasmuch as the Court cannot unmarry the parties.² 123.

Where a purchase is set aside for inadequacy of consideration, the conveyance will be ordered to stand as a security for what has been advanced.³ 124.

Deeds of the nature of family arrangements are exempt from the rules as to the adequacy of the con-

¹ St. § 251 ; Cockell v. Taylor, 15 Beav. 103, 115 ; Longmate v. Ledger, 2 Gif. 157 ; Clark v. Malpas, 31 Beav. 80 ; 4 D. F. & J. 401 ; Baker v. Monk, 33 Beav. 419.*

² St. § 250.

³ Longmate v. Ledger, 2 Gif. 157 ; Douglas v. Culverwell, 3 Gif. 251 ; Baker v. Monk, 33 Beav. 419.

* But slight circumstances will be sufficient to overturn presumption of frauds. Bigelow on Fraud, 280. It was held in Hallenbeck v. Dewitt, 2 Johns. 404, that proof that the grantor in a deed was a very ignorant and illiterate man, and could not read writing, and that the deed was not read to him, is not sufficient to avoid the deed, unless he requested that it be read to him. See Jackson v. Croy, 12 Johns. 427.

sideration applicable to other deeds; the consideration in such cases being compounded partly of value and partly of natural affection; and it is not necessary that there should be any rights in dispute, in order to uphold them.¹ 125.

4. Where gifts and legacies are bestowed on persons, on condition that they shall marry with the consent of parents, guardians or other confidential persons, Courts of Equity will not suffer the manifest object of the condition to be defeated by the fraudulent, corrupt, or unconscientious refusal of the parties whose consent is required to the marriage.² 126.

II. Second class of actual frauds. 11. There are other frauds which receive that denomination mainly or in a great measure from the consideration of the peculiar condition of the injured parties. 127.

With regard to these:

1. On persons of unsound mind. 1. In the case of contracts or other acts, however solemn, of persons who are idiots, lunatics, or otherwise of unsound mind, wherever, from the nature of the transaction, there is not evidence of entire good faith, or it is not seen to be just in itself or for the benefit of those persons, Courts of Equity will set it aside, or make it subservient to their just rights and interests. But where

¹ Persee v. Persee, 7 Cl. & Fin. 279; Williams v. Williams, 2 Dr. & Sm. 378; L. R. 2 Ch. Ap. 294. As to deeds of this nature, see also Stapilton v. Stapilton, 2 Lead. Cas. Eq., 2d ed. 684, *et seq.*; Dimsdale v. Dimsdale, 3 Drew. 556, 569, 571; Greenwood v. Greenwood, 2 D. J. & S. 28.

² St. § 257.

there is entire good faith, and the contract or other act is for the benefit of such persons, as to provide them with necessaries, there Courts of Equity will uphold it, as well as Courts of Law.¹ 128.

2. If a person, at the time of entering into a contract or doing an act, was so excessively drunk as to be deprived of the use of his understanding; or if there was any contrivance or management to lead him to drink, or some unfair advantage taken of his intoxication, Courts of Equity will not lend their assistance to the person who obtained an agreement or deed from him, when so intoxicated, but will assist him in getting rid of it, on account of the fraud of the other party in obtaining such agreement or deed from a person in such a state or by such means.² 129.

2. On intoxicated persons.

3. The contracts and other acts of persons who are of weak understanding will be held void in Equity, if the nature of such contracts or other acts justifies the conclusion that the party has been imposed on, circumvented, or overreached by cunning, artifice, or undue influence.³ But to constitute undue influence, there must be either fraud or coercion by fear; and the burden of proving that the will of a person of sound mind was executed under undue influence is on the party who alleges it.⁴ 130.

3. On persons of weak understanding.

¹ St. § 227-9; *Manby v. Bewicke*, 3 K. & J. 342.

² See St. § 230-2.

³ See St. § 234-8; *Longmate v. Ledger*, 2 Gif. 157; *Nottidge v. Prince*, 2 Gif. 246.

⁴ *Boyse v. Rossborough*, 6 H. L. Cas. 2, 33, 34.

4. Where a party is not a free agent, and is not equal to protect himself, a Court of Equity will protect him.^(a) Hence Equity will relieve against acts done under duress, or under the influence of threats or of real or imaginary terrors, calculated to deprive a person of free agency.¹ And it watches with the utmost jealousy all contracts made by a person while under imprisonment; and if there is the slightest ground to suspect oppression or imposition, it will set the contract aside. And, in like manner, circumstances of extreme necessity and distress may so entirely overpower free agency, as to justify the Court in setting aside a contract on account of some oppression or fraudulent advantage attendant on it.² 131.

4. On persons who are not free agents,

but under duress, or in fear,

or in prison or extreme necessity.

5. Infants may, even at Law, bind themselves in some cases, by contracts for necessities suitable to their degree and quality, or by acts which the Law requires them to do. But in general, where a contract may be either for the benefit or to the prejudice of an infant, he may avoid it, as well at

5. On infants.

¹ St. § 239; *Boyse v. Rossborough*, 6 H. L. Cas. 2, 49; *Williams v. Bayley*, L. R. 1 H. L. 200.*

² St. § 239.

(a) The writer submits that this principle ought, in accordance with reason and justice, to have been applied to the case of *Re Metcalfe's Trusts*, 2 D. J. & S. 122, the case of a professed nun.

* Equity follows the law as to what is duress, *Miller v. Miller*, 62 Penn. St. 486. Equity will relieve by ordinary cancellation of instrument procured by duress, *Harshaw v. Dobson*, 64 N. C. 38; *Thurman v. Burt*, 53 Ill. 129.

Law as in Equity. Where it can never be for his benefit it is utterly void.(a) 132.

By the statutes 37 and 38 Vict. c. 62, s. 1, it is enacted, that "all contracts, whether by specialty, or by simple contract, henceforth entered into by infants for the repayment of money lent, or to be lent, or for goods supplied, or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be absolutely void. Provided always, that this enactment shall not invalidate any contract into which an infant may by any existing or future statute, or by the rules of Common Law or Equity, enter, except such as now by Law are voidable." 132 a.

It may here be observed that when one of two innocent persons must suffer by the fraud of a third person, that person shall be the sufferer, who by his conduct, however innocently, put it in the power of the third person to commit the fraud.¹ 133.

Case where
one of two
innocent
persons
must suffer.

¹ *Adsetts v. Hives*, 33 Beav. 52; *Hunter v. Walters*, L. R. 11 Eq. 292.*

(a) *Smith's Manual of Common Law*, Am. ed. 59, 60; St. § 240, 241.

* The rule is well settled that when one of two innocent parties must suffer loss by the default or fraud of a third the loss must fall upon him who first gave the confidence, or whose act misled the other. *Chitty on Contracts*, 763; *Rost v. French*, 13 Wend. 573; *Gill v. Schley*, 2 Md. Ch. D. 281; *Bigelow v. Comegys*, 5 O. S. R. 256; *Lichbarrow v. Mason*, 2 T. R. 70.

CHAPTER IV.

OF CONSTRUCTIVE FRAUD.

Definition. CONSTRUCTIVE frauds are acts, statements, or omissions, which operate as virtual frauds, on individuals, or, if generally permitted, would be prejudicial to the public welfare, and are not clearly resolvable into mere accident or mistake, and yet may have been unconnected with any selfish or evil design, or may amount, in the opinion of the person chargeable therewith, to nothing more than what is justifiable or allowable.* 134.

* In the class of cases considered in the preceding chapter under the head of actual fraud it is necessary for the party alleging the fraud to support the charge by express evidence. In considering the cases of constructive fraud, it will be seen that, upon the appearance of certain relations between the parties, termed "relations of confidence," the law raises a presumption that the transaction complained of was effected by fraud or undue influence by the opposite party, who holds a position affording peculiar opportunities for taking advantage, and the law requires the party in the superior position to show that his action has been honest; and raises a presumption against a party who sustains a confidential relation in respect of property, pecuniary interest, or bodily custody of another, in any transaction having relation thereto, a presumption that the party in the inferior position has been affected by undue and unlawful means. See Bigelow on Fraud, pp. 190, *et seq.*

The cases which will be noticed in the present chapter may be arranged in four classes—

Four classes
of construc-
tive frauds.

I. Relief is granted, on the ground of constructive fraud upon public policy, against agreements, provisions, and transactions, which, although they may not operate as frauds upon individuals, would, if generally permitted, be prejudicial to the welfare of the community. 135. Thus,

1. Frauds
on public
policy.

1. Marriage brokerage contracts, which are agreements whereby a person engages to give another a remuneration, if he will negotiate

1. Marriage
brokerage
contracts.

a marriage for him, are void, as tending to introduce matches which are ill-advised, and not based on mutual affection, and therefore against public policy. And they are so utterly void, that they are deemed incapable of confirmation; and money paid under them may be recovered back again, in a Court of Equity, whether the marriage is an equal or an unequal one.¹ 136.

2. The same rules are applied to bonds and other agreements entered into as a reward for using influence over another, to induce him to make a will for the benefit of the obligor;² for such contracts encourage a spirit of artifice and scheming most prejudicial to the moral tone of those

2. Agree-
ments to in-
fluence tes-
tators.

¹ St. § 260-3; 2 Lead. Cas. Eq., 2d ed. 178, *et seq.**

² St. § 265.

* Boynton v. Hubbard, 7 Mass. 112.

in whom it exists ; and they tend to deceive and injure others. 137.

3. On a similar ground, secret contracts made with parents, or guardians, or other persons standing in a peculiar relation to one of the parties, whereby, on a treaty of marriage, they are to receive remuneration for promoting the marriage or giving their consent to it, are held void.¹ 138.

4. On the other hand, a contract is void, if it is expressly in restraint of marriage generally, or if it is so restricted that it is probable that it may virtually operate in restraint of marriage generally;² as, that a woman shall not marry a man who has not an estate of £500 a year,³ or shall not marry till fifty years of age, or shall not marry any person residing in the same town, or any person who is a clergyman, a physician, or a lawyer, or any person except of a particular trade or occupation.⁴(a) 139.

A contract or condition imposed on a married woman to cease to reside at a place where her husband then resides, is bad.⁵ 140.

¹ St. § 266, 267 ; 2 Lead. Cas. Eq., 2d ed. 178, *et seq.*

² See St. § 274, 276-283 ; *Scott v. Tyler*, 2 Lead. Cas. Eq., 2d ed. 105, 198, *et seq.*

³ St. § 280.

⁴ St. § 283.

⁵ *Wilkinson v. Wilkinson*, L. R. 12 Eq. 604.

(a) As to conditions, conditional limitations, and special limitations in restraint of marriage, see the writer's "Compendium of the Law of Property," 5th ed., par. 198-228 ; 2 Lead. Cas. Eq., 2d ed. 178, *et seq.*

5. So, contracts and conditions in general restraint of trade, or beyond what is reasonably necessary for the protection of the party seeking protection, are void, as tending to discourage industry, enterprise, and just competition. But a person may be restrained from carrying on trade in or within a certain distance from a particular place, or with particular persons, or for a reasonable limited time. And a person may lawfully sell a secret in his trade or business, and restrict himself from using the secret.¹ 141.

5. Contracts or conditions in restraint of trade.

6. Where, pending a bill in Parliament, an agreement is entered into to produce a false impression, or to mislead or suppress inquiry, or to withdraw public opposition thereto, it will be held void as a fraud upon Parliament, as well as upon the public at large.² 142.

6. Fraud in relation to a bill in Parliament.

7. Contracts for the buying, selling, or procuring of public offices are void, as tending to introduce into public offices persons

7. Contracts for public offices.

¹ St. § 292; *Benwell v. Inns*, 24 Beav. 307; *Harms v. Parsons*, 32 Beav. 328; *Catt v. Tourle*, L. R. 4 Ch. Ap. 654; *Leather Cloth Co. v. Lonsont*, L. R. 9 Eq. 345; *Allsopp v. Wheatcroft*, L. R. 15 Eq. 59.*

² St. § 293 a.†

* *Peabody v. Norfolk*, 98 Mass. 452.

† So in America a contract to procure the passage of an Act of the Legislature, by any sinister means, or by using personal influence with the members, is void, as being inconsistent with public policy and the integrity of our political institutions. *St. Eq. Jur.* § 293 b; *Marshall v. Balto. & Ohio R. R.*, 16 How. Sup. Ct. 314; *Mills v. Mills*, 40 N. Y. 543; *Frost v. Belmont*, 6 Allen, 152. But see also *Trist v. Childs*, 21 Wall. 441.

who are unfit for them in respect of character and other qualifications.¹ 143.

8. So are agreements for the suppression of criminal prosecutions,² as tending to weaken the beneficial preventive influence of the Law, by diminishing the certainty of punishment. 144.

9. So are contracts which have a tendency to encourage champerty,³ and agreements, bonds, and securities founded on corrupt considerations, that is, on the commission of what is contrary to the moral or municipal Law, or on the evasion thereof.⁴ And where contracts are intended to carry out an immoral purpose (as in the case of a house let for a brothel), even though that purpose do not appear on the face of the instrument, none of the stipulations comprised therein will be enforced.⁵ 145.

Wherever any contract or conveyance is void, either by a positive Law or upon principles of public policy, it is deemed incapable of confirmation; it being a maxim, *Quod ab initio non valet, in tractu temporis non convalescit*. But where it is merely voidable, or turns upon circumstances of undue advantage, surprise, or imposition, there it is valid until rescinded, and if it is deliberately and upon full examination confirmed by the parties, it will remain valid.⁶ 146.

¹ St. § 295.

² St. § 294.

³ St. § 294; *Reynell v. Sprye*, 1 D. M. & G. 660.

⁴ St. § 294-7.

⁵ *Smith v. White*, L. R. 1 Eq. 626.

⁶ St. § 306. See *Reese River Silver Mining Co. v. Smith*, L. R. 4 H. L. 64.

And where a party to a deed acts upon it in part, that confirms it altogether, in the absence of evidence of a contrary intent.¹ 147.

II. With regard to transactions *inter vivos*, where a reasonable confidence is reposed in another person, or a peculiar influence is possessed by him in consequence of standing in a confidential relation, and he makes use of that confidence or that influence to obtain an advantage to himself at the expense of the party confiding in him or under his influence, he will not be permitted to retain any such advantage, however unimpeachable the transaction would have been if no such confidence had been reposed, or no such confidential relation had existed.² But it has been held that this does not apply to a devise or bequest. To set aside a testamentary disposition on account of undue influence, it must amount to this,—that the testator was not a free agent.³ 148.

II. Frauds
in the case
of persons
in the confi-
dential rela-
tions of—

¹ *Jarratt v. Aldam*, L. R. 9 Eq. 463; *Davies v. Davies*, L. R. 9 Eq. 468.

² *Huguenin v. Baseley*, 2 Lead. Cas. Eq., 2d ed. 462, *et seq.*; *Sharp v. Leach*, 31 Beav. 491; *Broun v. Kennedy*, 33 Beav. 133; see also *Rhodes v. Bate*, 4 Gif. 670; L. R., 1 Ch. Ap. 252; *Tate v. Williamson*, L. R. 1 Eq. 528; 2 Ch. Ap. 55; *Moxon v. Payne*, L. R. 8 Ch. Ap. 881.*

³ *Parfitt v. Lawless*, L. R. 2 Prob. 462.

* *Adams's Eq.* 183, *et seq.*, and notes; *Hill on Trustees*, 4th Am. ed. 248-256.

1. Parent or person standing *in loco parentis* or relative having influence.

1. Contracts and conveyances whereby benefits are secured by children to their parents or to persons who stand *in loco parentis*, or dispositions made by young persons in favor of their relatives who have an influence over them, if not entered into with scrupulous good faith and reasonable, under the circumstances, will be set aside, unless third persons have acquired an interest under them.¹ In such cases, it must be proved, first, that the deed was the real and actual deed of the child or young person, and was intended by him to have the operation it has; and secondly, that such intention was fairly produced. And where a child, recently after attaining majority, makes over property to the father, without consideration, or for an inadequate consideration, Equity will require the father to be able to show that the child was really a free agent and had adequate and independent advice.² And if an estate held in trust for a father for life, the

¹ St. § 309; *Hoghton v. Hoghton*, 15 Beav. 278; *Espey v. Lake*, 10 Hare, 260; *Wright v. Vanderplank*, 2 K. & J. 1; 8 D. M. & G. 133; *Dimsdale v. Dimsdale*, 3 Drew. 556, 558, 577; *Baker v. Bradley*, 7 D. M. & G. 597, 620; *Potts v. Surr*, 34 Beav. 543; *Berdoo v. Dawson*, 34 Beav. 603; *Sercombe v. Sanders*, 34 Beav. 332; *Chambers v. Crabbe*, 34 Beav. 457; *Turner v. Collins*, L. R. 7 Ch. Ap. 329; *Kempson v. Ashbee*, L. R. 10 Ch. Ap. 15.*

² *Savery v. King*, 5 H. L. Cas. 627, 655; *Bury v. Oppenheim*, 26 Beav. 594; *Davies v. Davies*, 4 Gif. 417.†

* *Taylor v. Taylor*, 8 How. Sup. Ct. 201; *Caspell v. Dubois*, 4 Barb. 393; see also *Jenkins v. Pye*, 12 Peters, 253, 254.

† *Haight v. Moore*, 37 N. Y. Sup. Ct. 161.

remainder to his son in fee, is sold by the father and son immediately on the son coming of age, and the whole purchase-money is paid to the father, there, if the assistance of the Court is required by the purchaser to complete the transaction, its straightforwardness must be proved:¹ 149.

If a person seeking to impugn such transactions is not reasonably prompt in so doing, after the influence has ceased, no relief will be given, unless there is actual fraud.² 150.

2. During the existence of guardianship, the relative situation of the parties occasions ^{2. Guardian.} a general inability to deal with each other. And Courts of Equity will not permit transactions between guardians and wards to stand, even when they have occurred after the minority has ceased, if the intermediate period is short; especially if all the duties attached to the office have not ceased, or if the estate still remains in some sort under the control of the guardian; unless the circumstances demonstrate the fullest deliberation on the part of the ward, and the most absolute good faith on the part of the guardian.³ 151.

But when the guardianship has entirely ceased, and a fair and full settlement of all transactions growing out of it has been made, and a sufficient time has intervened to allow the ward to feel completely inde-

¹ *Hannah v. Hodgson*, 30 Beav. 19.

² *Turner v. Collins*, L. R. 7 Ch. Ap. 329; *Kempson v. Ashbee*, L. R. 10 Ch. Ap. 15.

³ St. § 317-320; *Wright v. Vanderplank*, 2 K. & J. 1.

pendent of the guardian, there is then no objection even to a bounty being conferred upon the latter.¹ 152.

3. The same principles are applied to persons standing in the relation of quasi guardians, or confidential advisers, or ministers of religion,² and to every case where influence is acquired and abused, where confidence is reposed and betrayed.³ 153.

4. A solicitor is not incapable of contracting with his client; but as the relation must give rise to great confidence in the solicitor, or to very strong influence over the client, the relation must be dissolved before the contract, or the whole onus of proving the fairness and propriety of the transaction will be thrown on the solicitor, or he must show that the client had sufficient advice and assistance to relieve him from the pressure arising from the relation of solicitor and client, and that he has taken no advantage of his professional position, but that he has done as much to protect the client's interest as he would have done in the case of the client dealing with a stranger.⁴ And a solicitor who is an agent for a sale

¹ St. § 320.

² Nottidge v. Prince, 2 Gif. 246.

³ Smith v. Kay, 7 H. L. Cas. 750, 771, 778, 779; Broun v. Kennedy, 33 Beav. 133; Graham v. Johnson, L. R. 8 Eq. 36; St. § 319.*

⁴ Sugd. Concise View, 548; St. § 310-313; Holman v. Loynes, 4 D. M. & G. 270; Tomson v. Judge, 3 Drew. 306; Savery v. King, 5 H. L. Cas. 627, 655, 656; Waters v. Thorn, 22 Beav. 547;

* Adams's Eq. [184], [185].

cannot become the purchaser, without fully explaining to the parties interested all the circumstances of the sale and of the value of the property; because his duty and his interest are in conflict.¹ And if a solicitor can show that he is entitled to purchase, yet if, instead of openly purchasing, he purchases in the name of a trustee or agent, without disclosing the fact, no such purchase can stand.² 154.

As a general rule, a solicitor shall not accept a gift or in any way whatever, in respect of the subject of any transaction between him and his client, make a gain to himself at the expense of his client, beyond the amount of the just and fair professional remuneration to which he is entitled.³ On the above principle, an agreement on the part of a client to allow a solicitor a commission of so much per cent. on a fund in Court, as a remuneration for recovering the fund or employing another solicitor to recover it, was void, as con-

Spencer v. Topham, Id. 573; *Cowdry v. Day*, 1 Gif. 316; *Gresley v. Mousley*, 1 Gif. 450; 4 D. & J. 78; *Pearson v. Benson*, 28 Beav. 598; *Gibbs v. Daniel*, 4 Gif. 1.*

¹ *In re Bloye's Trust*, 1 Mac. & G. 494, 497.

² *Lewis v. Hillman*, 3 H. L. Cas. 630.†

³ 4 Cruise T. 32, c. 26, § 35; St. § 312; *Moss v. Bainbrigge*, 18 Beav. 478; 6 D. M. & G. 292; *Tomson v. Judge*, 3 Drew. 306; *Re Holmes's Estate*, 3 Gif. 337; *Nanney v. Williams*, 22 Beav. 452; *Walker v. Smith*, 29 Beav. 394; *Bank of London v. Tyrrell*, and *Tyrrell v. Bank of London*, 27 Beav. 273; 10 H. L. Cas. 26; *O'Brien v. Lewis*, 4 Gif. 221.†

* *Adams's Eq.* [184], note; *Bigelow on Fraud*, 207-209, and case there cited; *Stockton v. Ford*, 11 How. Sup. Ct. 232-246.

† *Bain v. Brown*, 56 N. Y. 285.

† See *Perry on Trusts*, § 202, 203, and cases cited.

trary to the policy of the Law.¹ And an agreement by a client to allow his solicitor interest on his bill of costs, could not be maintained—at all events, not unless the solicitor informed the client that the Law allowed no such charge, or the client acquiesced, after the termination of the relation, and after proper advice upon the subject.² But a deed executed by a client in favor of his solicitor, if voidable, may be confirmed by the will of the client.³ 155.

An agreement between a solicitor and client that a gross sum shall be paid for costs for business already done is valid. But an agreement to pay a gross sum for business hereafter to be done was void. And if a solicitor takes a gross sum for his services without an account, he should preserve evidence of the fairness of the agreement, and that the client had good advice, or had full opportunity and capacity to judge for himself.⁴ 156.

But these paragraphs must be read subject to the stat. 33 and 34 Vict. c. 28. 157.

If a solicitor and mortgagee obtains a conveyance from the mortgagor, and the mortgagor is a man in humble circumstances without any legal advice, the onus of justifying the transaction and showing that it was a fair and right transaction is thrown upon the mortgagee.⁵ 158.

¹ *Strange v. Brennan*, 15 Sim. 346.

² *Lyddon v. Moss*, 4 D. & J. 104.

³ *Stump v. Gaby*, 2 D. M. & G. 623. But see *Waters v. Thorn*, 22 Beav. 547, 559.

⁴ *In re Newman*, 30 Beav. 196; *Morgan v. Higgins*, 1 Gif. 277.

⁵ *Press v. Coke*, L. R. 6 Ch. Ap. 645, 649.

5. Similar principles apply to a medical adviser and his patient.¹ 159. 5. Doctor.

6. An agent will not be permitted to reap any advantage by becoming secret vendor or purchaser of property which he is authorized to buy or sell for his principal.² So that if an agent sells his own property to his principal as the property of another, without disclosing the fact, or if an agent purchases the goods of his principal in another name, however fair the transaction may be, the principal may either repudiate it, or may claim any profit made by the agent, in order to deter agents from placing themselves in a state of temptation to benefit themselves rather than their employers. And if an agent employed to purchase for another purchases for himself, he will be considered as the trustee of his employer, at the option of the latter.³ And in all transactions directly and openly entered into between principal and agent, the utmost good faith is required; so that the agent must not conceal any facts within his knowledge which might influence the judgment of his principal as to the price or value.⁴ 160. 6. Agent.

¹ St. § 315.

² St. § 315.

³ St. § 316, 1211 a; *Bentley v. Craven*, 18 Beav. 75; *Bank of London v. Tyrrell*, 27 Beav. 273; *Tyrrell v. Bank of London*, 10 H. L. Cas. 26; *Wentworth v. Lloyd*, 32 Beav. 467; *Kimber v. Barber*, L. R. 8 Ch. Ap. 56.*

⁴ St. § 315, 316 a; see *Dally v. Wonham*, 33 Beav. 154.†

* *Torry v. Bank of New Orleans*, 9 Paige, 649; *Dobson v. Racey*, 3 Sandf. 61; *Voorhees v. Presbyterian Church*, 8 Barb. 136.

† The principal may at his election deem the bargain made or act done by his agent valid or not; the agent himself cannot avoid it on that ground. *Story, Agency*, § 210, cases there cited.

7. Trustees. 7. To guard against the danger of any advantage being taken by a trustee, and to remove all temptation from him, he is never permitted to obtain any profit or advantage to himself in managing the concerns of his *cestui que trust*, but whatever benefits or profits are obtained will belong to the *cestui que trust*. And he is not allowed to partake of the bounty of the party for whom he acts, except under circumstances which would make the same valid if it were a case of guardianship.¹ A trustee cannot purchase the trust estate from himself or from his co-trustee. And if a purchase is made of the trust estate by the trustee from his *cestui que trust*, although at a public auction, unless there has been no fraud, concealment, or advantage on the part of the trustee, and no want of protection and security on the part of the *cestui que trust*, the *cestui que trust* may require a re-conveyance or a re-sale; and, if the re-sale produces more than the trustee gave, the *cestui que trust* may repudiate the first sale, and adopt the re-sale; if less, he may affirm the first sale.² 161.

8. Counsel, agents, trustees, and solicitors of a bankrupt or insolvent, auctioneers, and creditors.

8. In order to prevent the temptation of availing themselves of information for their own benefit, and concealing it from those for whom they act, the same restriction on the right of purchase applies to other persons standing in similar confidential situations; as

¹ St. § 321, 322; see *infra*, Tit. II, c. VI, div. IV; and c. VII, div. XII.

² Sugd. V. & P., 14th ed. 69, 691-4; Lewin on Trusts, 4th ed. 335-342; St. § 322; 2 Sp. 943, 944; Smedley v. Varley, 23 Beav. 358; Denton v. Donner, Id. 285; 1 Lead. Cas. Eq., 4th Am. ed. 154, 165.

to counsel, agents, trustees, and solicitors of a bankrupt's or insolvent's estate, auctioneers, and creditors, who have been consulted as to the sale.¹ 162.

9. And it may be laid down as a general rule with regard to executors or administrators, that they will not be permitted under any circumstances to derive a benefit from the manner in which they transact the business of their office.² 163.

9. Executors or administrators.

10. Entire good faith is required between debtor and creditor and sureties. And if a creditor does any act affecting the surety, or if he omits to do any act of duty which he is required to do by the surety, or is bound to do, and that act or omission may prove injurious to the surety, or if a creditor enters into any stipulations with the debtor, unknown to the surety, and inconsistent with the terms of the original contract, the surety may set up such contract as a defence to any proceeding against him, in a Court of Law or Equity. So that if a creditor stipulates with his debtor, in a binding manner, upon a sufficient consideration, to give further time for payment, without the consent of the surety, the latter will be thereby discharged, if the arrangement might be inju-

10. Debtor, creditor, and surety.

¹ St. § 322; 2 Sp. 943; *Pooley v. Quilter*, 2 D. & J. 327.*

² St. § 322; *Robinson v. Pett*, 2 Lead. Cas. Eq., 4th Am. ed. 238, 241, 254, *et seq.*

* *Cram v. Mitchell*, 1 Sandf. Ch. 257; *Farnam v. Brooks*, 9 Pick. 212.

rious to him.¹ But it has been held (improperly, as the writer with great deference submits), that a covenant not to sue the debtor, or a deed of release only amounting to such a covenant, and reserving the creditor's rights against the surety, does not discharge the surety.² And a conditional agreement for further time does not discharge the surety, when, from the agreement not being performed, the agreement does not become binding.³ It has been repeatedly held (but contrary to principle, as the writer submits), that the giving of time does not discharge the surety, if it is agreed between the creditor and the principal debtor, when further time is given, that the surety shall not be thereby discharged.⁴ Mere delay on the part of the creditor, at least if some other Equity does not intervene, unaccompanied with any valid contract for such delay, will not amount to laches, so as to discharge the surety.⁵ But the sureties are entitled to come into a

¹ St. § 324-6, 883, 883 a, note; *Rees v. Berrington*, 2 Lead. Cas. Eq., 4th Am. ed. 974, 994, *et seq.*; *Tucker v. Laing*, 2 K. & J. 745; *Blest v. Brown*, 3 Gif. 450; 4 D. F. & J. 367; *Strange v. Fooks*, 4 Gif. 408; *Oriental Financial Corporation v. Overend & Co.*, L. R. 7 Ch. Ap. 142; *Wilson v. Lloyd*, L. R. 16 Eq. 60.*

² *Green v. Wynn*, L. R. 4 Ch. Ap. 204.

³ St. § 883 a, note.

⁴ *Webb v. Hewitt*, 3 K. & J. 442; *Wyke v. Rogers*, 1 D. M. & G. 408; Lord Hatherley, C., in *Oriental Financial Corporation v. Overend & Co.*, L. R. 7 Ch. Ap. 150.

⁵ St. § 326; *Tucker v. Laing*, 2 K. & J. 745.

* *United States v. Howell*, 4 Wash. C. C. 620-623; *Harris v. Brooks*, 21 Pick. 195-197; 2 Am. Lead. Cas. (5th ed.) 389, 412, 417, 466.

Court of Equity, after a debt has become due, to compel the debtor, or any one who has given them an indemnity, to exonerate them from their liability by paying the debt.¹ 164.

III. Relief will be granted in favor of those classes of persons, of whom, from their peculiar circumstances, irrespective of any mental incapacity, undue advantage may readily be taken, even where the transaction could not be impeached if entered into by parties otherwise situated.² 165. Thus,

III. Frauds in case of persons peculiarly liable to be imposed on.

1. Bargains with expectant heirs will be set aside, unless the purchaser, on whom the *onus probandi* rests, can show that a full consideration was paid, or that the bargain was fully made known to and approved by the person to whose estate the expectant heir hoped to succeed; because it is the policy of Equity to prevent designing men from taking advantage of persons whose interests are future, and therefore apt to be underestimated or improvi-

1. Bargains with expectant heirs.

¹ St. § 327, 369; *Wooldridge v. Norris*, L. R. 6 Eq. 410; and see judgment in *Green v. Wynn*, L. R. 4 Ch. Ap. 207.

² *Earl of Chesterfield v. Janssen*, 1 Lead. Cas. Eq., 2d ed. 428, *et seq.**

* A conveyance or contract will be set aside, wherever it has been obtained through undue influence over a person greatly under the power of another, if there is inadequacy of price, or clear ground of inference that a confidence reposed has been abused, or advantage has been taken of incompetency, weakness of understanding, or clouded or enfeebled faculties. *Wheeler v. Smith, et al.*, 9 How. Sup. Ct. 55, 82; *Whelan v. Whelan*, 3 Cowen, 539, 572. See also *Taylor v. Taylor et al.*, 8 How. Sup. Ct. 133.

dently disposed of, especially by the necessitous, the thoughtless, and the young; and it is also the object of Equity to discourage transactions by which the intentions of the ancestor or other person, from whom the property was expected are disappointed, and, by cutting off relief at the hands of strangers, to oblige the heir to disclose his difficulties at home.¹ 166.

If the heir, after being relieved from his necessities, absolutely and deliberately, and on full information as to his right of setting aside the bargain, confirms the transaction, or does any act by which the rights or property of the other party are injuriously affected, he will not be allowed to repudiate the bargain.² 167.

The repeal of the usury laws has not altered the rules of the Court as to dealings with expectants.³ 168.

The same relief was afforded to remaindermen and reversioners, unless the purchaser could show that a full consideration was paid, or that the bargain was fully made known to and approved by their parents or other persons standing *in loco parentis*, who had the means of obviating the necessity of such an alienation of their future interests.⁴

And remaindermen and reversioners.

¹ See St. § 334-340, 343.

² St. § 345, 346.

³ Croft v. Graham, 2 D. J. & S. 155; Miller v. Cook, L. R. 10 Eq. 641, 646; Tyler v. Yates, L. R. 11 Eq. 265; 6 Ch. Ap. 665; Earl of Aylesford v. Morris, L. R. 8 Ch. 490.

⁴ St. § 334-340; Salter v. Bradshaw, 26 Beav. 161; St. Albyn v. Harding, 27 Beav. 11; Talbot v. Staniforth, 1 Johns. & H. 484; Foster v. Roberts, 29 Beav. 467; Jones v. Ricketts, 31 Beav. 130; Sharp v. Leach, 31 Beav. 491; Nesbitt v. Berridge, 32 Beav. 282;

This doctrine applied to a charge as well as a sale, and notwithstanding the expectant was of mature age, and fully understood the nature of the transaction. And it was not necessary to show that he was in pecuniary distress; for that would be assumed.¹ 169.

By the Stat. 31-Vict. c. 4, it is enacted that "no purchase made *bonâ fide* and without fraud or unfair dealing, of any reversionary interest in real or personal estate shall hereafter be opened or set aside merely on the ground of undervalue" (s. 1); and that "the word 'purchase' in this Act shall include every kind of contract, conveyance, or assignment under or by which any beneficial interest in any kind of property may be acquired" (s. 2); and that "this Act shall come into operation on the first day of January, One thousand eight hundred and sixty-eight, and shall not apply to any purchase concerning which any suit shall be then depending" (s. 3). 170.

This Act leaves undervalue still a material element in cases in which it is not the sole equitable ground for relief.³ 171.

Dally v. Wonham, 33 Beav. 154, 162; Perfect v. Lane, 3 D. F. & J. 369; Beynon v. Cook, L. R. 10 Ch. Ap. 389.*

¹ Bromley v. Smith, 26 Beav. 644; Tynte v. Hodge, 2 Hem. & Mil. 287.†

² See Miller v. Cook, L. R. 10 Eq. 641; Tyler v. Yates, L. R. 11 Eq. 265.

³ Earl of Aylesford v. Morris, L. R. 8 Ch. Ap. 484, 490.

* See also Jenkins v. Stetson, 9 Allen, 128.

† Bigelow on Frauds, 276.

2. Post-obit bonds, etc., by expectants.

2. On similar principles post-obit bonds and other securities of the like nature are set aside, when made by heirs and other expectants. A post-obit bond is an agreement made on the receipt of the money by the obligor, to pay a sum exceeding the sum so received and the ordinary interest thereof, on the death of the person upon whose decease he expects to become entitled to some property.¹ Even the sale of a post-obit bond at a public auction will not give it validity, unless the sale was free, fair, and with the usual precautions and advertisements.² If, however, these contracts are perfectly fair in other respects relief will not be granted, except upon the terms of paying that to which the lender is equitably entitled.³ 172.

3. Sales to expectants at exorbitant prices.

3. Where tradesmen and others have sold goods to young and expectant heirs, at exorbitant prices, and under circumstances indicative of imposition, or of undue influence, or of an intention to connive at profuse expenditure, unknown to their parents or other persons standing *in loco parentis*, Equity has cut down the claim to a just amount.⁴ 173.

4. Common sailors.

4. Common sailors, being so extremely generous, credulous, and improvident a class of men that they require guardianship all their lives, Equity treats them in the same light as young expectant heirs; and relief is generally afforded against contracts respecting their prize-money or wages, wher-

¹ St. § 342.

² St. § 347.

³ St. § 344.

St. § 348.

ever any inequality appears in the bargain, or any undue advantage has been taken.¹ 174.

5. Where a person, shortly after attaining his majority, makes a gift, sale or lease, in favor of a relative, it will be set aside, unless the grantor or lessor makes it intentionally and deliberately, after having had the fullest information on the subject, and separate, independent, and disinterested advice; even though the terms, in the case of a sale or lease, were fair, but yet not so advantageous as might have been obtained.² 175.

5. Disposition by a person after majority.

IV. Where something is said or done, or some omission is made which operates as a virtual fraud upon an individual, but may have been nothing more than mere neglect, unconnected with any selfish or evil design, or may amount, in the opinion of the party, to nothing more than justifiable artifice, or to a fair attempt to obtain a reasonable advantage, or to an allowable act, statement, or omission of some other kind, relief will be granted on the ground of constructive fraud. 176. Thus,

IV Virtual frauds on individuals irrespective of any confidential relation, or any peculiar liability to imposition.

1. Where a person by some act, statement, or omission, whether beneficially to himself or not, knowingly produces a false impression on another, who is misled and injured thereby; and such act, statement, or omission when rightly considered,

1. Misleading.

¹ St. § 332.

² *Grosvenor v. Sherratt*, 23 Beav. 659.*

* St. Eq. Jur. § 337 b.

is contrary to plain moral duty or good faith, but yet may not have been connected with any design either to injure another or to benefit the person who is guilty thereof, in such case the latter alone, even though an infant or married woman, shall suffer thereby on the ground of constructive fraud.¹ For instance, where a person knowing himself to be the owner of property, permits another to sell it as his own to a third person, who purchases under the supposition that the vendor has a good title, the real owner will not be allowed to assert his title to it.² And where a person aware of the existence of an instrument under which he might reasonably have supposed that he took some interest, neglects to make proper inquiries as to the fact, and encourages a stranger to deal with another person respecting property in which he himself is interested under such instrument, he will be bound by the transaction.³ And where a person becomes a trustee of money for several creditors, and at the date of the trust deed he had a charge on the share of one of them, but it is not mentioned in the deed, he will be postponed to another person who had a subsequent charge on that share, and had no notice of the trustee's charge, but gave him due notice of his own charge.⁴ And where a person grants a lease on the security of which money is lent, and the lessor, before the lease was granted,

¹ See St. § 384-390 ; 2 Sp. 575, 576.

² St. § 385, 389.

³ See St. § 387.*

⁴ Commissioners of Public Works v. Harby, 23 Beav. 508.

* Wendell v. Van Rensselaer, 1 John's Ch. 354.

was asked by the lender whether he intended to grant such lease, and he answered in the affirmative, forgetting that he had previously granted another lease to the same person, who had assigned it for value, the lessor was held liable for the loss arising from the invalidity of the security.¹ 177.

2. Upon sound principle, agreements whereby persons agree not to bid against each other at an auction, especially where the same is directed or required by Law, are held void. For such agreements may cause the property to be sold at an under value, and thereby injure the person interested in the proceeds of sale; and they have a tendency to prejudice the character and value of auctions in general.² On the other hand, if underbidders or puffers are employed at an auction to enhance the price, and other bidders are thereby misled, the sale will be void.³(a) 178.

3. As the Statute of Frauds was designed as a protection against fraud, it will never be allowed to be set up as a protection and support of fraud.⁴ And hence, where from any circumstances which may have resulted from fraud,

2. Frauds
on auctions.

3. Uncon-
scientious
use of the
Statute of
Frauds.

¹ *Slim v. Croucher*, 1 D. F. & J. 518.

² See St. § 293; Sugd. V. & P., 13th ed. 93. But in *re Carew's Estate*, 26 Beav. 187, and *Galton v. Emuss*, 1 Coll. 243, such agreements were held to be not illegal. (See Darts. V. & P., 4th ed. 99.)

³ St. § 293.

⁴ *Lincoln v. Wright*, 4 D. & J. 16; *Haigh v. Kaye*, L. R. 7 Ch. Ap. 469; *Booth v. Turle*, L. R. 16 Eq. 182.

(a) See stat. 30 and 31 Vict. c. 48, at the end of the book.

a contract has not been reduced into writing as it ought to have been, it will be enforced against the party who is chargeable with the omission, in case he attempts to shelter himself behind the provisions of the Statute.¹ 179.

4. Clandestine marriage contracts.

4. If clandestine marriage contracts are designed to impose on parents or persons standing *in loco parentis* or in some other peculiar relation to the parties, so as to disappoint their bounty, or to defeat their intentions in the disposition of their property, such contracts will be set aside, or the equities will be held the same as if they had not been entered into.² 180.

5. Frauds on marriages.

5. So, relief will be granted to the injured parties, where persons, after doing acts required to be done on a treaty of marriage, render those acts virtually unavailing, by entering into other secret agreements, or derogate from those acts, or otherwise commit a fraud upon a marriage.³ As where a parent declines to consent to a marriage, on account of the intended husband being in debt, and the brother of the latter gives a bond for the debts, to procure such consent; and the intended husband then gives a secret counter-bond to his brother, to indemnify him against the first bond.⁴ So where a brother, on the marriage of his sister, let her have a sum of money privately, that her fortune might appear to be as much as was insisted on, and the sister gave a bond to the brother to secure the repayment thereof, the bond was set aside.⁵

¹ See St. § 330.

² See St. § 275.

³ See St. § 268-272.

⁴ St. § 269.

⁵ St. § 270.

So where upon a treaty of marriage, a creditor of the intended husband concealed his own debt, and misrepresented to the wife's father the amount of the husband's debts, the transaction was treated as a fraud upon the marriage, and the creditor was prevented from enforcing his debt.¹ And where a father, on the marriage of his daughter, enters into a covenant, that on his death he will leave her a full and equal share of all his personal estate, he cannot afterwards transfer a portion of his personal property to another child, retaining the annual income thereof for his life.² 181.

6. Relief will also be granted against acts secretly done by a woman in contravention of the marital rights, or in disappointment of the just expectations of her intended husband. As where a woman, in contemplation of marriage, and without the privity of her intended husband, makes a settlement to her separate use, or a conveyance in favor of persons for whom she is under no moral obligation to provide. But a reasonable provision for her children by a former marriage, under circumstances of good faith, is free from objection.³ 182.

¹ St. § 271.

² St. § 382.

³ St. § 273; 2 Sp. 505; *Countess of Strathmore v. Bowes*, 1 Lead. Cas. Eq., 2d ed. 325, *et seq.*; *Prideaux v. Lonsdale*, 4 Gif. 159; 1 D. J. & S. 433; *Downes v. Jennings*, 32 Beav. 290.*

* Bigelow on Fraud, 52-55. It has been frequently decided in this country, that a secret voluntary settlement or conveyance of her property by a woman, pending a treaty of marriage, and in contemplation of marriage, without the knowledge of her intended husband, is fraudulent and void against her husband, as being in

7. Frauds
under the
stat. 13 Eliz.
c. 5.

7. In consequence of the stat. 13 Eliz. c. 5, deeds, though good as between the parties and in other respects, are void as against creditors, when made with an actual intent to defraud them,¹ even though such deeds be for valuable consideration,² except as regards a *bond fide* purchaser from the debtor, or from an assignee of the debtor, without notice of the circumstances amounting to such actual fraud. And if a person makes a conveyance or assignment of any real or personal property which is liable to his debts (unless it is to a purchaser for valuable consideration who has no notice of a fraudulent intent), and at the time, or immediately afterwards, he is indebted to such an amount that he has not ample means besides that property available to pay the debts, such conveyance or assignment is void as against those who were creditors at the time of and subsequent to the deed, to the extent to which it may be necessary to deal with the property for their satisfaction.³ A deed,

¹ 4 Cruise T. 32, c. 27, § 4; *Shee v. French*, 3 Drew. 717; *Bessey v. Windham*, 6 Ad. & El. (N. S.) 166.

² 4 Cruise T. 32, c. 27, § 4; *Strong v. Strong*, 18 Beav. 408; *Bott v. Smith*, 21 Beav. 511; *Ware v. Gardner*, L. R. 7 Eq. 317.

³ See St. § 352-374, 381; 2 Sp. 887; 4 Cruise T. 32, c. 27, § 15-17; *Coote Mortg.*, 3d ed. 238; 2 Bl. Com. 441; 1 Pres. Shep. T. 66; Ad. Con., 6th ed. 149-156; *Twyne's Case*, 3 Co. 80; Chit. Con. 8th ed. 380, *et seq.*; *Skarf v. Soulby*, 1 Mac. & G. 364; *Re Magawley's Trust*, 5 De G. & S. 1; *Bott v. Smith*, 21 Beav. 511;

derogation of his marital rights and just expectations. See cases cited in notes of the American Editor, 1 White & Tudor's Lead. Cas. Eq.; *Countess of Strathmore v. Bowes*, 618, 619; *Bigelow on Fraud*, 52-55.

however, which is apparently voluntary, may be shown by extrinsic evidence to have been made for valuable consideration, and may be supported as such against creditors.¹ And a deed is not necessarily void under this Act, merely because designed to prefer or defeat a particular creditor.² 183.

Barton v. Vanheythuysen, 11 Hare, 126; *Dening v. Ware*, 22 Beav. 184; *Holmes v. Penny*, 3 K. & J. 90; *Turnley v. Hooper*, 3 Sm. & G. 349; *Darville v. Terry*, 6 Hurl. & Norm. 807; *Thompson v. Webster*, 4 Drew. 628; 4 D. & J. 600; *Acraman v. Corbett*, 1 Johns. & Hem. 410; *Barling v. Bishopp*, 29 Beav. 417; *Stokoe v. Cowan*, 29 Beav. 637; *Spirett v. Willows*, 3 D. J. & S. 293; *Smith v. Cherrill*, L. R. 4 Eq. 390; *Reese River Silver Mining Company v. Atwell*, L. R. 7 Eq. 347; *Freeman v. Pope*, L. R. 9 Eq. 206; 5 Ch. Ap. 538; *Allen v. Bonnett*, L. R. 5 Ch. Ap. 577; *Cornish v. Clark*, L. R. 14 Eq. 184; *Kent v. Riley*, L. R. 14 Eq. 190; *Taylor v. Coenen*, L. R. 1 Ch. D. 636.*

¹ *Pott v. Todhunter*, 2 Coll. 76.

² *Ad. Con.*, 6th ed. 151; *Chit. Con.*, 8th ed. 383; *Alton v. Harrison*, L. R. 4 Ch. Ap. 622.

* The doctrine established in the Supreme Court of the United States is, that a voluntary conveyance made by a person not indebted at the time in favor of his wife or children, cannot be impeached by subsequent creditors, upon the mere ground of its being voluntary. It must be shown to have been fraudulent or made with a view to future debts. *Sexton v. Wheaton*, 8 Wheaton, 229, 230; *Hinds, Lessee, v. Longworth*, 11 Wheaton, 199; 4 Kent Com. 464 n. and cases cited. And the mere fact of indebtedness at the time does not, *per se*, constitute a substantive ground to avoid a voluntary conveyance for fraud even in regard to prior creditors. The question whether fraudulent or not is to be ascertained from all the surrounding circumstances. See also *St. Eq. Jur.* § 362; *McLaughlin v. Bank of Potomac*, 7 How. Sup. Ct. 220; *Re Cornwall*, 9 Blatchford, 116; *Schouler's Dom. Rel.* 280, 281.

A man who contemplates going into trade, cannot, on the eve of doing so, take the bulk of his property out of the reach of those who may become his creditors in the trading operations. So that a voluntary settlement, whereby the settlor takes the bulk of his property out of the reach of his creditors, shortly before engaging in trade of a hazardous character, may be set aside in a suit on behalf of creditors who became such after the settlement.¹ 184.

8. Frauds on creditors. 8. If a creditor, who is a party to a composition deed, has, unknown to the other creditors, obtained any benefit or security, either from the debtor or a third person, beyond what the others have received, or enters into a contract with the debtor which prevents him from being put into that situation of freedom from existing demands, which may be considered as one of the chief inducements to the others to sign the deed, it is a fraud on the policy of the Law; and such secret arrangements are entirely void, even as against the assenting debtor, or his sureties, or his friends; and money paid under them may be recovered back.² 185.

So an agreement between an insolvent debtor and his assignee, by which the estate of the insolvent is to be held in trust, to pay certain annuities to the insolvent, and to apply the surplus to the extinction of a debt to the assignee, will be rescinded, even at the instance of the insolvent himself.³ And it was held to

¹ Mackay v. Douglass, L. R. 14 Eq. 106.

² See St. § 378, 379; 2 Sp. 357-360.

³ St. § 380.

be a fraud for a creditor secretly to obtain a larger dividend than was received by the other creditors, under the arrangement clause in the Bankrupt Act of 1849 (s. 230); and relief was granted even at the instance of the debtor.¹ 186.

9. Where a person takes a mortgage, or a conveyance, or a settlement, with notice of the legal or equitable title of other persons to the same property, his own title will be postponed and made subservient to their title, or to that of a transferee from them.² Thus, if a person takes a mortgage of property, knowing that it was subject to an equitable mortgage made by deposit of the title-deeds, the notice of the equitable mortgage will raise a trust in him to the amount of the equitable mortgage.³ And, on the same principle, if a mortgagee, when he takes his security from a partner, knows that the firm are in possession of the property, he has constructive notice of the title of the partnership, and his claim must be postponed to that of the other partner, as regards his share, and his right to be recouped in respect of partnership debts paid off by

9. Mortgage or conveyance with notice of another's title.

¹ *Mare v. Sandford*, 1 Giff. 288.

² St. § 395, 396; Sugd. Concise View, 595-7; *Le Neve v. Le Neve*, 2 Lead. Cas. Eq., 2d ed. 23, *et seq.*; *Atterbury v. Wallis*, 8 D. M. & G. 454; *Pease v. Jackson*, L. R. 3 Ch. Ap. 576; *Barnes v. Wood*, L. R. 8 Eq. 424; *Maxfield v. Burton*, L. R. 17 Eq. 15; except in cases within the stat. 27 Eliz. c. 4. See par. 193-9, *infra*.*

³ St. § 395.

* *Bigelow on Fraud*, 293; *Atlantic Bank v. Harris*, 118 Mass. 147.

him, whether contracted before or after the mortgage.¹ 187.

Notice is attended with the same consequence even where the property lies in a register county. For, the object of the Registration Acts being only to secure subsequent purchasers and mortgagees against prior secret conveyances and incumbrances, if a subsequent purchaser or mortgagee has notice, at the time of his purchase or mortgage, of any prior unregistered conveyance or mortgage, he will not be permitted to avail himself of his title against the prior conveyance or mortgage, any more than he would if the same were registered.² 188.

Notice may be either actual or constructive, *i. e.*, imputed by construction of Law.³ Actual notice, to constitute a binding notice, at least where it depends on oral communication only, must be given by a person interested in the property, and in the course of the treaty.⁴ 189.

As regards constructive notice, whatever is sufficient, or whatever for the purposes of justice is to be deemed sufficient, to put any person of ordinary prudence on inquiry, is constructive notice of everything to which that inquiry might have led.⁵ And hence a purchaser who has notice of a tenancy is deemed to have notice

¹ *Cavander v. Bulteel*, L. R. 9 Ch. Ap. 79.

² St. § 397; 2 Sp. 763.

³ 2 Sp. 754.

⁴ 2 Sp. 753.

⁵ 2 Sp. 755-760; *Ogilvie v. Jeaffreson*, 2 Gif. 353, 378; *Leigh v. Lloyd*, 2 D. J. & S. 330; *Broadbent v. Barlow*, 3 D. F. & J. 570; *Pilcher v. Rawlins*, L. R. 11 Eq. 53, 7 Ch. Ap. 259; *Maxfield v. Burton*, L. R. 17 Eq. 15; *Cavander v. Bulteel*, L. R. 9 Ch. Ap. 79.

of a lease, if any, and therefore is not entitled to any compensation on account of it.¹ And, as a general rule, a purchaser or other person has constructive notice of the contents of the instrument under which he claims, or under which the party with whom he contracts, as executor or trustee or appointee, derives his power. Under ordinary circumstances, a man cannot claim under a deed or will, and yet repudiate a knowledge of its contents.² But the mere registration of a conveyance is not deemed constructive notice to subsequent purchasers, as to collateral effect; so that the mere registration of a second mortgage will not prevent a prior mortgagee from tacking a third mortgage, when he had no actual notice of the existence of the second mortgage.³ To constitute constructive notice, it is sufficient if it is brought home to the agent, attorney, or counsel, in the same transaction, or in one immediately preceding; unless there is a moral certainty that he would not have communicated the fact to the principal or client,⁴ or he, colluding with the person who was bound to give notice, concealed the fact.⁵

¹ *James v. Lichfield*, L. R. 9 Eq. 51.

² St. § 400; *Pilcher v. Rawlins*, L. R. 11 Eq. 53; 7 Ch. Ap. 259.

³ St. § 401, 402; 2 Sp. 763.

⁴ St. § 408; 2 Sp. 700, 761; *Spaight v. Cowne*, 1 Hem. & Mil. 359; *Atterbury v. Wallis*, 8 D. M. & G. 454; *Thompson v. Cartwright*, 33 Beav. 178, 185; *Rolland v. Hart*, L. R. 6 Ch. Ap. 678; *Maxfield v. Burton*, L. R. 17 Eq. 15.*

⁵ *Sharpe v. Foy*, L. R. 4 Ch. Ap. 35.

* *Astor v. Wells*, 4 Wheat. 466.

not interfere.¹ Nor will Equity interfere where the voluntary grantee has conveyed to a *bonâ fide* purchaser for valuable consideration, before the *bonâ fide* purchaser from the voluntary grantor acquired his title.² And Equity will not give its aid to a voluntary settlor to enable him to complete a contract for sale against a purchaser.³ 193.

The law that a man who has executed a voluntary settlement is enabled to sell the estate just as if he had done nothing, is highly unreasonable. And the Courts will now lay hold of any circumstances constituting a consideration moving from the grantee to the grantor to take a case out of the category of voluntary deeds.⁴ 194.

There is this exception to the general rule in the case of a charity, that if a purchaser has notice of a gift to a charitable use, or purchases without notice of it from a purchaser who had notice of it, he takes subject to it; though, if he has no notice, and he has not purchased from a purchaser with notice, he will have the same protection as he would have against an ordinary voluntary conveyance.⁵ 195.

A fair voluntary settlement in favor of a wife and

¹ St. § 425, 426, 433; 2 Sep. 288, 638; *Ellison v. Ellison*, 1 Lead. Cas. Eq., 2d ed. 199, *et seq.*; *Kelson v. Kelson*, 10 Hare, 386; *Barton v. Vanheythuysen*, 11 Hare, 126; *Lewis v. Rees*, 3 K. & J. 132, 150, 151; *Daking v. Whimper*, 26 Beav. 568; *Lloyd v. Attwood*, 3 D. & J. 614; *Dolphin v. Aylward*, L. R. 4 H. L. 486; *Rosher v. Williams*, L. R. 20 Eq. 210.

² St. § 434.

³ 2 Sp. 289.

⁴ V.-C. Malins, in *Rosher v. Williams*, L. R. 20 Eq. 218.

⁵ 2 Sp. 289; *Tudor's Char. Trusts*, 2d ed. 329-332.

children is also an exception to the rule to this extent, that almost any *bond fide* consideration, in addition to the meritorious consideration of the provision itself, will be sufficient for the purpose of supporting the settlement, whether it appear on the face of the settlement, or be otherwise made out. Therefore, if a person whose concurrence the parties deem essential, joins in a settlement, his concurrence will be deemed a valuable consideration, although he did not substantially part with anything.¹ 196.

As to pre-nuptial settlements and post-nuptial settlements in pursuance of pre-nuptial articles, or on receipt of an additional portion, or on which the husband and wife, having interests, give up something, they are settlements for valuable consideration, and of course good against subsequent purchasers, or against prior voluntary grantees, as the case may be.² 197.

A collateral relation who is the object of an ulterior limitation in a settlement, is not a mere volunteer; for though he may not be within the consideration of the marriage, he is within the contract; but yet it has been held that he cannot prevail against a purchaser.³ 198.

A conveyance for payment of debts generally, to which no creditor is a party, and in which no particular debt is expressed, is a fraudulent conveyance within the statute.⁴ 199.

¹ See 2 Sp. 288, 290; Sugd. Concise View, 568, 569; Atkinson v. Smith, 3 D. & J. 186; Bayspoole v. Collins, L. R. 6 Ch. Ap. 228.

² Smith's Compendium, 5th ed., par. 2395; In re Foster and Lister, L. R. 6 Ch. D. 87.

³ 2 Sp. 291-3.

⁴ 2 Sp. 351.

12. Frauds
in the case
of volun-
tary gifts,
as against
the donors
themselves.

12. In every transaction in which a person obtains by voluntary donation a benefit from another, it is necessary, if the transaction be called in question, that he should be able to establish that the person giving him the benefit did so voluntarily and deliberately, and with full knowledge of what he was doing; if this is not established, the transaction will be set aside.¹ And

Want of a
power of re-
vocation.

where the circumstances are such that the donor ought to be advised to reserve a power of revocation, it is the duty of the solicitor to the donor, or a solicitor acting for both parties, so to advise; and in such a case, the want of such a power will in general, in the absence of such advice, be fatal to the deed.² It is not necessary to show that the usual clauses were explained; but any unusual clauses must be shown to have been brought to the donor's notice, explained, and understood.³ 200.

13. Fraudu-
lent ap-
pointments.

13. The donee of a power must exercise it *bona fide* for the end designed; otherwise it is considered as a fraud upon the power.⁴

¹ *Huguenin v. Baseley*, 2 Lead. Cas. Eq., 2d ed. 462, *et seq.*; *Cooke v. Lamotte*, 15 Beav. 241; *Anderson v. Elsworth*, 3 Gif. 154; *Sharp v. Leach*, 31 Beav. 491; *Toker v. Toker*, 31 Beav. 629; *Phillipson v. Kerry*, 32 Beav. 628; *Lyon v. Home*, L. R. 6 Eq. 655.*

² *Coutts v. Acworth*, L. R. 8 Eq. 558, 567; *Wollaston v. Tribe*, L. R. 9 Eq. 44; *Phillips v. Mullings*, L. R. 7 Ch. Ap. 244, 247, 248; *Hall v. Hall*, L. R. 14 Eq. 365.

³ *Phillips v. Mullings*, L. R. 7 Ch. Ap. 244, 248.

⁴ *Topham v. Duke of Portland*, 1 D. J. & S. 517.

* Bigelow on Fraud, 197; St. Eq. Jur. § 706 b.

Hence, where a person has a power of appointing to all or any of his children, and he exercises it in favor of one child, merely in order to remove an objection to the title of an estate, the appointment is void. And if a person having a particular power to be exercised for the benefit of others, makes an appointment in payment of a debt due to the appointee by the appointor, or upon the terms or for the purpose of securing some benefit to himself or some others not objects of the power, such an appointment is fraudulent and will be set aside in Equity: as where the donee of a power appoints a fund to one of the objects of a power, under an understanding that the latter is to lend the fund to the former, though on good security; or that the appointee should hold the fund in trust for, or make over a part to, persons some of whom are not objects of the power.

Appointment must be made for the end designed.

Appointment whereby a benefit secured to the appointor or a stranger.

Upon the same principle, if a parent appoints an immediate portion to an infant who is not in want of it, or appoints to a child, whether infant or adult, who is seriously ill, with a view to becoming entitled to that which is so appointed himself, as the personal representative of such appointee in the event of his death, the appointment is void as a fraud upon the power.

Appointment to an infant.

Where a person exercises a general power of appointment in favor of a stranger, it will be deemed a fraud upon his creditors,

Rights of creditors against a general appointee.

who will in Equity become entitled to the money in the hands of the appointee.¹ 203.

14. Putting an end to that which formed the consideration for a contract.

14. If a man has induced another to enter into a contract with him, by representing an actual state of things as a security for the enjoyment of an interest which he has himself created for valuable consideration, he is not at liberty, by his own act, to derogate from that interest, by determining the state of things which he has so held forth as the consideration for entering into the contract.² 204.

15. Rescinding contract in order to benefit by a flaw in the title.

15. A person who has entered into a purchase contract, cannot rescind such contract, in order to turn to his own benefit a flaw in the vendor's title, which he has discovered from the abstract: as by buying up the interest of an heir-at-law whose concurrence is necessary.³ 205.

¹ Smith's Compendium of the Law of Property, 5th ed., par. 2136-8; *Aleyn v. Belchier*, 1 Lead. Cas. Eq., 2d ed. 304, *et seq.*; *Re Marsden's Trust*, 4 Drew. 594.

² *Piggott v. Stratton*, Johns. 341; 1 D. F. & J. 33.*

³ *Murrell v. Goodyear*, 2 Gif. 51; 1 D. F. & J. 432.

* St. Eq. Jur. § 956. See also *Phillips v. Boardman*, 4 Allen, 147; *Parker v. Nightingale*, 6 Allen, 341.

TITLE II

Of Executive Equity.

CHAPTER I.

OF LEGACIES AND PORTIONS.

No action lies, at the Common Law, to recover legacies, unless the executor has assented to them ;¹ because all the chattels vest in him, and are liable to the payment of the testator's debts, and it is <sup>Jurisdic-
tion.</sup> the duty of the executor, before he pays, delivers over, or assents to the legacies, to see whether there will be sufficient left to pay the debts, inasmuch as a man must be just before he is permitted to be generous.² But after the executor has assented to a specific legacy of chattels, the property vests immediately in the legatee, who may maintain an action at law for the recovery thereof. A similar rule was attempted to be applied at Law to pecuniary legacies, but the application was doubted and disapproved of,³ because Courts of Law could not impose on the parties recovering these legacies such terms as might be required ; so that, for example, a husband might recover a legacy given to his wife, without making any provision for her or her family.⁴ And where there is an actual trust, express, implied, or constructive, or the legacy is charged on land, or the other Courts cannot take due care of the interests of all parties, Courts of Equity will assert

¹ St. § 591. ² See 2 Bl. Com. 512. ³ St. § 591. ⁴ St. § 592.

an exclusive jurisdiction. And even where the executor has assented to the legacy, and there is no actual trust, yet they have jurisdiction, though it may be merely a concurrent jurisdiction; because the executor is considered as a kind of trustee for the legatees, which forms a universal ground of equitable interference; and because the interposition of a Court of Equity may be required to obtain an account or distribution of assets, or some other relief or assistance which the other Courts are or were incompetent to afford.¹ 206.

By the stat. 20 and 21 Vict. c. 77, s. 23, no suit for legacies or the distribution of residues shall be entertained by the Court of Probate, or by any Court or person whose jurisdiction as to matters and causes tes-

¹ See St. § 593-602.*

* In some of the Courts in this country an action at law to recover a pecuniary legacy has been maintained after assent by the executor; in others it is allowed by statute. St. Eq. Jur. § 592, note, and cases there cited. At Law, the surplus of personal estate goes to the executor after payment of all debts and legacies. In Equity, he is trustee of the surplus for benefit of next of kin, if from the nature and circumstances of the will a presumption arises that the testator did not intend the executor should take the surplus to his own use. See St. Eq. Jur. § 596 and note. As to what circumstances will be sufficient to turn the legal estate of the executor into a trust, see Jeremy, Eq. Jur., B. 1, ch. 1, § 2, pp. 122 to 135; 2 Roper on Legacies by White, ch. 24, pp. 579, 590-640; Id. ch. 6, § 2, pp. 337, 338; a matter of presumption substantially. See also 1 Perry on Trusts, § 94. In America, the surplus is by law universally distributable among the next of kin in the absence of all contrary expressions of intention by the testator. St. Eq. Jur. § 1208 and note.

tamentary is thereby abolished. But by the stat. 9 and 10 Vict. c. 95, s. 65, and 13 and 14 Vict. c. 61, s. 1, a legacy not involving a trust, and not exceeding £50, may be recovered in a County Court. 207.

In cases of legacies payable at a future day, whether contingent or otherwise, Courts of Equity will compel the executor to give security for the payment thereof; or, which is the modern and perhaps the more appropriate practice, it will order the fund to be paid into Court, even if there is not any actual waste or danger of waste.¹ 208.

Legacy payable at a future day.

And where a specific legacy is given to one for life, and after his death to another, there the legatee in remainder can obtain a decree for security from the tenant for life, for the due delivery over of the legacy to the remainder-man, if there is some allegation and proof of waste, or of danger of waste. But, in the present day, if there is no such allegation and proof, the remainder-man is only entitled to have an inventory of the property which was bequeathed to him, so that he may be enabled to identify it, and to enforce a due delivery of it, when his right of present possession accrues.² 209.

Specific legacy to one for life, remainder to another.

Generally speaking, when a future period of distribution among children is contemplated by the will or other instrument, all who are born during the life of the parent, or before the period of distribution, are entitled to a share.³ 210.

What children to be included.

¹ St. § 603.

² St. § 604.

³ 2 Sp. 418. See *Viner v. Francis*, Tud. Lead. Cas. Real Prop., 2d ed. 702.

Legacy for
a purpose
which can-
not be ac-
complished.

If a legacy is given for a particular purpose, the fact that it cannot be effected will not prevent the legacy from vesting in the donee.¹ So that if a bequest be to or in trust for a legatee, to apprentice him, or the like, it is an absolute gift to the legatee; and if he dies before it is so applied, it will belong to his representatives.² 211.

What is a
portion.

A legacy by a parent to a child is presumed to be a portion, although it be not so expressed; because it is the duty of a parent to provide for his child. The duty which is imposed upon the parent may be assumed by any other person who for any reason thinks proper to put himself in that respect in the place of the parent; and when it is so assumed, the same presumption will arise as in the case of a legacy or gift by a parent. There are many doctrines which are applicable to portions, that is, sums of money secured or given by a parent or person standing *in loco parentis* to a child, which would not be applied to a gift as between strangers.³ 212.

Where por-
tions or
legacies are
not to be
raised.

If portions or legacies charged on land are made payable on an event personal to the party to be benefited, and he dies before that event happen, the portion or legacy is not to

¹ 2 Sp. 466, note (c).

² 2 Sp. 462.

³ 2 Sp. 394.*

* Whether the donor has for the purpose assumed the office of parent so as to invest his gift with the character of a portion, may be proved by extrinsic evidence, such as general conduct towards the children, or by intrinsic evidence, as from the nature and terms of gift. See 2 Spence. Eq. Jur. 394.

be raised out of the land. But it is otherwise if the payment is postponed until the happening of an event not referable to the person of the party to be benefited, but to the circumstances of the estate out of which the portion or legacy is to be paid.¹ 213.

Where a portion is secured, and no particular time is fixed for the vesting, if the child dies before the time when the portion is needed, the portion will not be raised; for it is reasonable that the land should be eased of the charge, when the only motive for making the same is at an end.² 214.

If there is a limitation to the parent for life, with a term to raise portions at twenty-one or marriage, and the interests are vested, the portions must be raised forthwith by sale or mortgage of the reversionary term, unless there is something to indicate an intention that the portions should not be raised until the term falls into possession.³ 215.

Time for
raising
portions.

When a legacy is given by a father or a person standing *in loco parentis*, as a provision for an infant, and no maintenance or interest is given, though the legacy be payable at a future day, the infant has an immediate right to interest.⁴ 215 a.

When real estate is so settled as that it must on the death of a parent go to his eldest son, and provision is made, not by a stranger or relation not standing *in loco parentis*, but by that parent or by a person standing *in loco parentis*, whether by pre-nuptial settlement or by will, for the

Construction
of provisions
for
"younger
children."

¹ 2 Sp. 396.

² 2 Sp. 398.

³ 2 Sp. 405.

⁴ 2 Sp. 409; 2 Rop. Leg., 4th ed. 1257, 1270, 1348.

younger children of such parent or person, the Court has considered the presumption, that it was intended to make provision for all the children, and not to give a double portion to any, to be so strong, that it has let in all children unprovided for by the settlement or will itself, or by means which were in contemplation of the parties making the settlement or will, though not strictly "younger," and has excluded the child provided for by the family estate, even though a younger child. This latitude of construction is not extended to a legal limitation in a deed. In ordinary cases, the period of distribution, and not the period of vesting, is the time for ascertaining who is to be excluded.¹ 216.

Construc-
tion of
legacies.

In deciding on the validity and interpretation of purely personal legacies, Courts of Equity in general follow the rules of the Civil Law, as they were recognized and acted on in the Ecclesiastical Courts; but as to the validity and interpretation of legacies charged on land, they generally follow the rules of the Common Law.² 217.

With these few remarks we must dismiss the subject of Legacies and Portions, as a separate topic, since it is so extensive, that the doctrines of Equity respecting it could not be even succinctly stated without far transgressing the limits allotted to the present Manual. 218.

¹ 2 Sp. 411-416; In re Bailey's Settlement, L. R. 9 Eq. 491.

² St. § 602, 608.

CHAPTER II.

OF DONATIONES MORTIS CAUSA.

COURTS of Equity maintain a concurrent jurisdiction in all cases of this kind, where the assistance afforded at Law was not adequate or complete.¹ 219.

Jurisdiction.

A *donatio mortis causa* is a gift of personal property made by one who apprehends that he is in peril of death, and evidenced by a manual delivery by him, or by another person in his presence by his direction, to the donee or some one else for the donee, of the property itself, or of the means of obtaining possession of the same, or of the writings by which the ownership thereof was created and conditioned to take effect absolutely in the event of his not recovering from his existing disorder, and not revoking the gift before his death.² Thus, negotiable notes, promissory notes, payable to order, though not indorsed, bills of exchange, though not indorsed, bank notes, bankers' deposit notes, checks drawn by a third per-

Definition.

What may be the subject of such donations.

¹ St. § 606; Ward v. Turner, 1 Lead. Cas. Eq., 2d ed. 721 *et seq.*

² St. § 606, 607 a-607 c; 1 Sp. 196; 2 Sp. 912; Power v. Helli-car, 26 Beav. 261.

son, policies of insurance, bonds, and mortgages, may be the subject of such donations; and goods in a warehouse may be given in like manner by a delivery of the key.¹ But the delivery of the donor's check, which was not presented before his death, was held not to be a good *donatio mortis causa*,² unless paid away for valuable consideration before his death.³ And railway stock cannot be the subject of a *donatio mortis causa*.⁴ 220.

Mixed character of such donations. A donation of this kind partakes partly of the characteristics of a gift of *inter vivos*, and partly of those of a legacy. It differs from a legacy in these respects: 1. It takes effect *sub modo* from the delivery in the lifetime of the donor; and therefore it cannot be proved as a testamentary act in the Court of Probate. 2. It requires no assent or other act on the part of the executor or administrator to perfect the title of the donee. It differs from a

¹ St. § 607 a; 1 Sp. 196; 2 Sp. 657; *Bouts v. Ellis*, 17 Beav. 121; *Veal v. Veal*, 27 Beav. 303; *Rankin v. Weguelin*, 27 Beav. 309; *Witt v. Amis*, 1 Best & Sm. 109; *Amis v. Witt*, 33 Beav. 619; *Moore v. Moore*, L. R. 18 Eq. 474.*

² *Hewitt v. Kaye*, L. R. 6 Eq. 198; *Bromley v. Brunton*, L. R. 6 Eq. 275; *In re Beak's Estate*, *Beak v. Beak*, L. R. 13 Eq. 489.

³ *Rolls v. Pearce*, L. R. 5 Ch. D. 730.

⁴ *Moore v. Moore*, L. R. 18 Eq. 474.

* There can be no valid donation *mortis causa*: (1) unless the gift be with a view to the donor's death; (2) unless it be conditioned to take effect only on the death of the donor, by his existing disorder, or in his existing illness; and (3) unless there be an actual delivery of the subject of the donation. See *Huntington v. Gilmore*, 14 Barb. 243; *Hitch v. Davis*, 3 Md. Ch. Dec. 206.

gift *inter vivos* in certain respects in which it resembles a legacy: 1. It is revocable during the donor's life-time. 2. It may be made to the wife of the donor. 3. It is liable to the debts of the donor on a deficiency of assets.¹ 221.

Words of absolute gift, if accompanied by expressions showing that the intention was that the property should be enjoyed only in the event of the death of the donor, will be sufficient to constitute a *donatio mortis causa*.² 222.

By what
words
created.

Evidence of the clearest and most unequivocal character is requisite to support a *donatio mortis causa*.³ 223.

Evidence.

¹ St. § 606 a; 1 Sp. 196.

² 2 Sp. 912.

³ *Cosnahan v. Grice*, 15 Moo. P. C. 215.

CHAPTER III.

OF EXPRESS PRIVATE TRUSTS EVIDENCED BY SOME
WRITTEN DOCUMENT.

I. Definition of a trust. I. A TRUST, when used in the sense of an equitable interest, is not now, as it was at one time, considered a chose in action; it is a beneficial interest in, or a beneficial ownership of, real or personal property, unattended with the possessory and legal ownership thereof.¹ 224.

II. Extent of jurisdiction over trusts. II. Trusts arising under wills are exclusively within the jurisdiction of Courts of Equity.² And indeed this is the case with most matters of trust.³ 225.

III. Division of trusts. III. Trusts may be divided into three kinds: express trusts, implied trusts, and constructive trusts. The last two, however, are frequently confounded, or at least classed together, and are sometimes designated by the name of implied trusts, and sometimes by the name of constructive trusts. 226.

¹ See Smith's Executory Interests, annexed to Fearn, § 40-6, 50; 2 Sp. 875.*

² St. § 1058.

³ St. § 962.

* See 1 Perry on Trusts.

IV. An express trust is a trust which is clearly expressed by the author thereof, or may fairly be collected from a written document. 227.

IV. Definition of an express trust.

V. The Statute of Frauds requires all declarations of trust of freehold, copyhold, or leasehold lands, tenements, or hereditaments, to be evidenced by some writing signed by the party declaring the same. But declarations of trust of money, even though secured on real estate, or of chattels personal, need not be so evidenced.¹ 228.

V. Mode of declaration of trust.

A declaration of trust, if *bond fide*, is valid, though at a distance of time. And if the document refers to any other document, which shows what was meant by the parties, that is sufficient.² And if the terms of the trust do not sufficiently appear upon the face of the instrument, evidence may be received to show the position of the party signing, and the circumstances by which he knew himself to be surrounded, and the credibility of the instrument.³ 229.

It is not necessary that there should be any actual transfer of property to render a declaration of trust effectual. If a person declares himself to be a trustee

¹ St. § 972; 1 Sp. 497, 498; 2 Sp. 19, 20, 897; Peckham v. Taylor, 31 Beav. 250.*

² 2 Sp. 21, 22.

³ 2 Sp. 22.†

* But a trust of personalty by parol must be clearly established or Equity will not enforce it. See *Turner v. Nye*, 7 Allen, 176; 1 Perry on Trusts, § 86.

† 1 Perry on Trusts, § 147, and cases there cited.

for another of money or personal property to be recovered, whether in writing or by acts or declarations of a decisive and definite nature sufficiently proved, the transaction will be binding against him and his representatives.¹ And if a person, by writing or by word, directs his debtor to hold the money due in trust for a third person, and such direction is communicated to the debtor and the donee, an effectual trust is created in favor of the donee.² And if a person signs and hands over a memorandum of gift of a bond, without handing over the bond, that has been held to be a good declaration of trust.³ But a mere promise to give, without valuable consideration, or a defective conveyance, gift, or assignment, without valuable consideration, where the party means actually to vest the *legal* ownership in the donee, or in any other person as trustee for him, will not be considered as a declaration of trust.⁴ In order to give validity to a declaration of trust, it is necessary that the person declaring the trust should have parted with his interest in the property, and put it out of his power, at least

¹ 2 Sp. 897; *Dipple v. Corles*, 11 Hare, 183; *Peckham v. Taylor*, 31 Beav. 250; *Grant v. Grant*, 34 Beav. 623.*

² 2 Sp. 53, 898; *Patterson v. Murphy*, 11 Hare, 88; *Vandenberg v. Palmer*, 4 K. & J. 204.†

³ *Morgan v. Malleon*, L. R. 10 Eq. 475.

⁴ 2 Sp. 57, 887; *Dipple v. Corles*, 11 Hare 183; *Warringer v. Rogers*, L. R. 16 Eq. 340; *Richards v. Delbridge*, L. R. 18 Eq. 11; *Moore v. Moore*, L. R. 18 Eq. 474.‡

* 1 Perry on Trusts, § 86, 96, 97.

† *Ib.*, § 104 and notes.

‡ *Ib.*, § 97.

in intention. So that a delivery of a box not containing a deed of gift, and of the key of which the party delivering it retains possession, will not amount to a declaration of trust of the contents.¹ And it has been held that a memorandum expressive of "an intention to leave" or a "determination to appropriate" a fund to a person, and a declaration, during a last illness, of a wish that it should be given to such person, does not amount to a declaration of trust, but is a mere inoperative indication of a testamentary intent not carried into effect.² 230.

VI. Where uses are expressly and clearly limited, which the Statute of Uses will not execute, that is, convert into legal estates, trusts are thereby created; for modern uses, unexecuted by the Statute, are trusts, just as all uses were trusts before the Statute was made. And where uses are engrafted on uses, the Statute only executes the first use; so that where an estate is limited to A and his heirs, to the use of B and his heirs, to the use of or in trust for C and his heirs, the Statute executes the use to B and his heirs; but the use to C and his heirs is not executed by the Statute, but is a trust.

VI. By what words a trust may be created.

¹ Warringer v. Rogers, L. R. 16 Eq. 340.

² Re Glover, 2 Johns. & H. 186.*

* So if the paper is in the nature of a testamentary disposition which requires to be proved in a Court of Probate, but is so imperfectly executed that it cannot be proved as a last will and testament, no trust will be created. See 1 Perry on Trusts, § 97 and cases cited.

Nor does the Statute execute uses or trusts where it is requisite that the trustee should continue to hold the estate in order to perform them. Nor does the Statute extend to uses or trusts of chattels real or personal; the words of the Statute being, "when any person is *seized* to the use," etc., and the word "*seized*" being inapplicable to personal estate. And trusts of copyholds were excluded from the operation of the Statute, because otherwise the rights of Lords would have been infringed.¹ 231.

No particular form of expression is necessary to the creation of a trust.² And a trust may be created, although there may be an absence of any expressions which in terms import confidence.³ 232.

There are many cases, arising under wills, in which it is very difficult to determine whether or not a trust was intended to be created. It may, however, be laid down as a general rule, that expressions of recommendation, confidence, hope, wish, and desire, are considered to create trusts, if the object and the property which is to form the subject of the supposed trusts are certain and definite, and if, regard being had to the whole context and circumstances of the will, the subject-matter, the previous conduct of the testator, the situation of the parties, and the probable intent, the expressions appear to have

¹ See St. § 970; 1 Sp. 466, 490; Tyrrell's Case, Tud. Lead Cas. Real Prop., 2d ed. 274.

² 1 Sp. 498; 2 Sp. 20.*

* Page v. Cox, 10 Hare, 169.

* 1 Perry on Trusts, § 82.

been intended to be imperative; and expressions showing a desire that an object should be accomplished, will be deemed imperative, unless there are plain express words, or there is a necessary implication that the testator did not mean to exclude a discretion to accomplish the object or not, as the party may think fit. But if either the object or the subject is not definite; or if a discretion and a choice to act or not is given; or if the prior disposition of the property imports an absolute ownership, as where it is given without any fetter in a former part of the will; or if the motive assigned is beneficial to the donee; or if the words which contemplate a benefit to a third person appear to be expressive of the motive by which the testator was actuated, rather than of a trust in favor of such person; as where a legacy is given to A the better to enable him to maintain his children; or where a testator bequeaths a sum to trustees upon trust to pay the income to a person for life, "nevertheless to be by him applied towards the maintenance, education, or benefit of his children," which are legal obligations in the case of a father, though only moral obligations in the case of a mother; no valid trust will be created by words of this character.¹ And any words by which

¹ St. § 1069, 1070, and notes; 2 Sp. 64-71; *Harding v. Glyn*, 2 Lead. Cas. Eq., 2d ed. 789, *et seq.*; *Briggs v. Penny*, 3 Mac. & G. 546; 2 Rop. Leg. 1446; *Thorp v. Owen*, 2 Hare, 607; *Macnab v. Whitbread*, 17 Beav. 299; *Reeves v. Baker*, 18 Beav. 372; *Castle v. Castle*, 1 D. & J. 352; *Gulley v. Cregoe*, 24 Beav. 185; *Byne v. Blackburn*, 26 Beav. 41; *Wheeler v. Smith*, 1 Gif. 300; *Quayle v. Davidson*, 12 Moo. P. C. 268; *Fox v. Fox*, 27 Beav. 301; *Bonser v. Kinnear*, 2 Gif. 195; *Shovelton v. Shovelton*, 32 Beav. 145;

it may be expressed or from which it may be implied, that the first taker may apply any part of the subject to his own use, are held to prevent the subject of the gift from being considered certain. And a vague description of the object, that is, a description by which the giver neither clearly defines the object himself, nor names a distinct class out of which the first taker is to select, or which leaves it doubtful what interest the object or class of objects is to take, will prevent the object from being certain within the meaning of the rule.¹ But where in terms or in effect a gift is made to a parent for or towards the support of himself and children, the mere fact that the parent may apply part of the property for his own support, does not render the subject uncertain, so as to prevent the disposition from being construed to create a trust in favor of his children. It is only an uncertainty

Bibby v. Thompson (No. 1), 32 Beav. 646; *Hart v. Tribe* (No. 4), 32 Beav. 279; 1 D. J. & S. 418; *Hood v. Oglander*, 34 Beav. 513; *Barrs v. Fewkes*, 2 Hem. & Mil. 60; *Eaton v. Watts*, L. R. 4 Eq. 151; *McCormick v. Grogan*, L. R. 4 H. L. 82; *Lambe v. Eames*, L. R. 10 Eq. 267; *Mackett v. Mackett*, L. R. 14 Eq. 49; *Curnick v. Tucker*, L. R. 17 Eq. 320; *Le Marchant v. Le Marchant*, 18 Eq. 414; *Stead v. Mellor*, L. R. 5 Ch. D. 225.*

¹ St. § 1070, note; 2 Sp. 69, 72, 78; *Green v. Marsden*, 1 Drew. 646.†

* For discussion of the subject of trusts created by the use of words of hope, confidence, wish, desire, etc., "precatory words," see 1 Perry on Trusts, § 112, 113, where the subject is elaborately treated in the text and notes, with full references to English and American cases.

† 1 Perry on Trusts, § 113.

which the Court can remove by ascertaining, if necessary, what should be devoted to the children.¹ Again, the family of A will often be a sufficient designation of the objects; for the context may render it definite, and show that it means the heir-at-law of A, or, in other cases, the children of A, or, in others, the brothers and sisters or next of kin of A, according to the Statutes of Distribution. Generally speaking, neither the husband nor the wife will be considered as included under the word "family." Although the term "relations" is still more indefinite, the Court has executed a trust in favor of relations, by giving the property, when personal, to the next of kin, according to the Statutes of Distribution, but *per capita*.² But where a testator devised his leasehold estates to his brother A forever, "hoping he would continue them in the family," this did not create a trust; for the words gave a choice, and the object was not definite.³ And where a testator bequeathed to his wife all the residue of his personal estate, "not doubting but that she will dispose of what shall be left at her death to his two grandchildren;" these words did not create a trust, because the property would be uncertain; for it might be just what she chose to leave.⁴ 233.

VII. A valid trust may be created by words expressive of confidence that a devisee or legatee will carry out the testator's wishes, verbally communicated to him before the will

VII. How a devise or bequest may be verbally impressed with a trust.

¹ 2 Sp. 463-5.

² St. § 1071; 2 Sp. 73-6.

³ St. § 1072; 2 Sp. 75.

⁴ St. § 1073.

was made.¹ And if a devisee or legatee expressly or impliedly promises a testator that he will give effect to the testator's wishes for the benefit of some other person, or for some object, even though they be only verbally expressed after the will was executed, the devise or bequest is subject to a trust to carry out those wishes, where they are such as, if expressed in the will, would be enforced.² 234.

It sometimes happens that although no valid trust is created, yet it is clear that a trust was intended; and in such instances the person to whom the gift is made is as completely excluded from taking beneficially as if a valid trust were created. This is the case where the words are directly or indirectly imperative, but the objects are too indefinite, or are not pointed out at all, or not in such a way that the Court can take judicial notice of them.³ 235.

VIII. Trusts executed and executory.

VIII. Express trusts are either executed or executory, in the sense of directory. A trust executed is a trust which appears to be finally declared by the instrument creating it. A trust, executory or directory, is a trust raised either by a stipulation or by a direction, in express terms or by necessary implication, to make a settlement or assurance to uses or upon trusts which are indicated in, but

¹ *Irvine v. Sullivan*, L. R. 8 Eq. 673.

² *McCormick v. Grogan*, L. R. 4 H. L. 82; *Norris v. Frazer*, L. R. 15 Eq. 318.

³ St. § 979 a, b; *Briggs v. Penny*, 3 Mac. & G. 546; *Bernard v. Minshull*, Johns. 276.

do not appear to be finally declared by, the instrument containing such stipulation or direction.¹ 236.

In the case of trusts executed, a Court of Equity puts the same construction on technical words as that which is put by a Court of Law on limitations of legal estates. But in the case of trusts executory, Equity considers the apparent intent to be collected from the whole instrument, or, where the language is doubtful, the presumable intent, rather than the strict import of technical words.² Thus, where the legal estate is limited to one for life, remainder to the heirs male of his body, he takes an estate tail male under the rule in *Shelley's Case*. And where, in a *will* or *voluntary deed*, there is a mere direction to settle an estate on one for life, to be followed by a remainder to the heirs of his body, as there is nothing of an inchoate or executory nature in the instrument itself, and the words are formal and explicit, and there is nothing in the instrument to show or afford a presumption that the words were not intended to be used in their technical sense, the mere reference to a further instrument does not render the trust executory, and therefore the limitations, as regards the rule in *Shelley's Case*, receive the same construction as similar words used in limiting

¹ Smith's Executory Interests annexed to Fearn, § 489; 2 Sp. 128, 129, 131-3; Lord Glenorchy v. Bosville, 1 Lead. Cas. Eq., 2d ed. 1, *et seq.*; Turner v. Sargent, 17 Beav. 515; Doncaster v. Doncaster, 3 K. & J. 26; Fullerton v. Martin, 1 Drew. & Sm. 31.*

² See 2 Sp. 131-5; Sackville-West v. Visc. Holmesdale, L. R. 4 H. L. 543.

* Saunders v. Edwards, 2 Jones's Eq. 134.

legal estates. But if *marriage articles* express that an estate is to be settled on the husband for life, with remainder to the heirs of his body, there the inchoate nature of the instrument, combined with the allusion to a further instrument, renders the trust executory; and as the issue in this case are purchasers for valuable consideration, so Equity will construe the articles as giving an estate for life only to the husband, with a remainder in tail to the children.¹ 237.

IX. Trusts in real property which are exclusively cognizable in Equity, are generally governed by the same rules as legal estates.² But, 1. The construction put upon trusts executory, as we have before seen, differs, in some respects, from that which prevails in regard to legal estates and trusts executed. 2. Before the late Dower Act, Courts of Equity held that trust estates were not subject to dower; because, before the question was tried, it was the general opinion that, by the creation of a trust estate, dower was prevented from attaching; and it is a maxim that, *communis error facit jus*; and to have held that trust estates were subject to dower would have affected a large proportion of the estates in the kingdom.³ 3. An equita-

IX. Trusts governed by same rules as legal estates.

Exceptions.

¹ 2 Sp. 136.*

² 1 Sp. 492, 499, 500, 502, 857, 876, 878.†

³ 1 Sp. 501.

* 1 Perry on Trusts, § 358, 359. The distinctions between executory and executed trusts, especially with regard to the application of the rule in Shelley's case, are generally recognized in the United States. See cases collected in note, Adams's Eq. [40.]

† St. Eq. Jur. § 974.

ble estate being incapable of livery of seisin and of every form of conveyance which operates by the Statute of Uses, a mere declaration of trust, if in writing, signed by the party bound or his agent lawfully authorized, was held sufficient to transfer such equitable estates; except that a fine or recovery was required, where the same would have been necessary if the estate had been a legal estate.¹ In practice, however, trust estates have been usually conveyed in the same manner as legal estates.² 4. Trusts were independent of the rules of the Common Law founded on tenure; so that a life interest in a trust estate was not forfeited on any alienation by the tenant for life.³ 238.

X. Long terms for years are often created X. Trusts of terms. for securing the payment of money lent on mortgage and for other purposes. Prior to the statute 8 and 9 Vict. c. 112, such terms did not determine on the mere performance of the trusts for which they were created, unless there was a special provision to that effect; but the legal interest remained in the trustee after they were performed; and at Law the term continued to be a term in gross, as distinct and separate from the inheritance as it was at first. But in Equity the term might become attendant on the inheri-

¹ See St. § 974, 974 a, and notes, and § 975; 1 Sp. 497, 500, 506, 877; and as to executory trusts, see *supra*, par. 30, 236, 237.

² 1 Sp. 506.*

³ 1 Sp. 500, 505.

* And where a trust is created for the benefit of a party, it is not only alienable by him by his own proper act and conveyance, but it is liable to be disposed of by operation of law *in invitum*. St. Eq. Jur. § 974 a. See also *Ames v. Clark*, 106 Mass. 573.

tance by express declaration, so as to follow the descent to the heir, and all the alienations made of the inheritance, or of any particular estate or interest carved out of it by deed or by will or by act of Law, and so as not to be devisable before the late Wills Act, without the formalities requisite for devising real estate, and, in short, so as to be governed in Equity by the same rules generally as the inheritance. Again, a satisfied term might become attendant on the inheritance with the same effect by mere implication ; for, as Equity always considers who has the right to the land in conscience, if the term was not subject to any ulterior limitation to which the inheritance was not subject, and the owner of the inheritance was entitled to the whole trust of the term, it was attendant on the inheritance by implication. 239.

In consequence of satisfied terms being deemed terms in gross at Law, but capable of being rendered completely subservient to the ownership of the inheritance in Equity, they were often made of the greatest use in protecting the inheritance from mesne estates, charges, and incumbrances. Thus, if a *bonâ fide* purchaser for valuable consideration, mortgagee, lessee, or other incumbrancer, took a conveyance, lease, or assignment, defective by reason of some estate, charge, or incumbrance, subsequent to the creation of a long-satisfied term for years and prior to his own conveyance, lease, or assignment, and of which he had no notice at the time of his contract, he might effectually protect himself against all persons claiming under such prior estate, charge, or incumbrance, by taking an assignment of the satisfied

term to a trustee for himself, or by taking an assignment thereof to himself where he took the conveyance, lease, or assignment of the estate or interest, to be protected in the name of a trustee; for he might use the legal estate in such satisfied term, to defend his possession during the continuance of the term, or, if he had lost the possession, to recover it.¹ 240.

By the stat. 8 and 9 Vict. c. 112, s. 1, every satisfied term which was attendant on the 31st of December, 1845, was on that day to cease, except that, if attendant by express declaration, it was to afford the same protection as it would have afforded if it had continued to subsist, but had not been assigned or dealt with after that day. And by s. 2, every term which, after the 31st of December, 1845, should become satisfied and attendant, was to cease immediately upon the same becoming so attendant. 241.

An attendant term might at any time be disannexed by the proper acts of the parties in interest, and be turned into a term in gross.² 242.

A trust term may be conveyed, as well as devised, so as to give successive interests to successive takers; whereas a legal term can only be devised in that manner.³ 243.

XI. A person in whose favor a trust has been created may affirm it, and enforce the performance thereof, although it was created without his knowledge, if at least it is not

XI. Trusts created without *creatus que trustis* knowledge.

¹ See St. § 998-1002, and notes; Sugd. Concise View, 477.

² St. § 1002.

³ 1 Sp. 513.

revoked by the author of the trust before it is so affirmed.¹ 244.

XII. What trusts will be enforced.

XII. Equity will enforce a trust where it is executed, or where it is raised by will, even though it is a mere voluntary trust; but it will not enforce an executory trust raised by a covenant or agreement, unless it is supported by a valuable consideration.² 245.

XIII. Execution of marriage articles.

XIII. Marriage articles will be specifically executed on the application of any person within the scope of the consideration of the marriage, or of those claiming under any such person. But they will not be specifically executed on the application of persons who are volunteers, even of a wife or child by a subsequent marriage; although where the proceeding is by persons who are within the scope of the consideration, or by those claiming under them, Courts of Equity will decree a specific execution throughout, as well in favor of the mere volunteers, as of the plaintiff, as the Courts either execute them *in toto*, or not at all.³ 246.

XIV. Assignments for benefit of creditors.

XIV. Putting the bankrupt and insolvent laws out of the case, a person is at liberty to assign all his property for the benefit of his creditors, though it may be for the purpose of de-

¹ St. § 972.

² See cases referred to, St. § 793, 793 a; 2 Sp. 52, 57, n. (c), 129, 255; *Ellison v. Ellison*, 1 Lead. Cas. Eq., 2d ed. 199, *et seq.* And as to the distinction between executory and executed, see *supra*, par. 236, 237.

³ St. § 986, 987; 2 Sp. 287.

feating some particular creditor of his execution in an action commenced by him against the debtor. For a debtor, in securing the equal distribution of his effects among all his creditors, is only performing a moral duty. But such an assignment must be free from fraud and misrepresentation.¹ 247.

Preferences and priorities of particular creditors are ordinarily valid, in general assignments made by debtors, in discharge of their debts, except under the laws of bankruptcy and insolvency.² But a debtor cannot vest his property in one of his creditors for the purpose of hindering and delaying his other creditors, and compelling them to come to terms; for such a deed is fraudulent and void.³ 248.

Assignees under general assignments take only such rights as the assignor or debtor had at the time of the general assignment; and consequently a prior special assignee will hold against them, without giving notice of his assignment.⁴ 249.

In order to entitle the creditors named in a general assignment for the benefit of creditors to take under it, it is not necessary that they should be technical parties thereto, unless they are named in the assignment as parties, and are expressly required to execute before they can take under its provisions. It is sufficient if

¹ 2 Sp. 350, 352; *Worseley v. De Mattos*, Tudor's Lead. Cas. Merc. Law, 438; *Harman v. Fishar*, Id. 455.*

² St. § 1036; 2 Sp. 350-2.

³ *Smith v. Hurst*, 10 Hare, 30.

⁴ St. § 1038.

* *McNeal v. Glenn*, 4 Md. 87.

they have notice of the trust in their favor, and assent to it; and if there is no stipulation for a release or any other condition which may render it not for their benefit, their assent will be presumed till the contrary appears.¹ Until, however, the creditors have assented to the trust, and given notice thereof to the assignee, an assignment of this kind, in which the creditors are not parties, and have not executed, is deemed revocable by the debtor, in Equity as well as at Law, whether the creditors are individually named or not.² 250.

Where creditors have acted under a deed of composition, and treated it as valid, a Court of Equity will also act under it and treat it as valid as against the assignor, though the creditors have not executed it within the time prescribed.³ 251.

Where there is an assignment to two trustees, and one assents and the other dissents, the property passes to the assenting trustee.⁴ 252.

XV. Revocability of a consignment or remittance. XV. In those cases where a consignment or remittance is made, with orders to pay over the proceeds to a third person, the appropriation is not absolute, but revocable at

¹ St. § 1336 a. See *Biron v. Mount*, 24 Beav. 642.*

² St. § 1036 b; *Steele v. Murphy*, 3 Moo. P. C. 445.†

³ 2 Sp. 354.

⁴ 2 Sp. 351.‡

* *New England Bank v. Lewis*, 8 Pick. 113; 2 *Perry on Trusts*, § 593.

† The question of general assignments for the benefit of creditors is becoming of less importance than formerly, in many of the American States, by reason of statutory provisions controlling such disposition. St. Eq. Jur. § 1037 a.

‡ St. Eq. Jur. § 1037, note.

any time before the third person has assented thereto, and notice of the same has been given to the mandatory; for it amounts to no more than a mandate from a principal to his agent, and it will be revoked by any disposition inconsistent with the execution of the mandate. But after such assent and notice, the third person may avail himself of it in Equity, without any reference to the assent or dissent of the mandatory; for his receipt of the property binds him to follow the order of his principal.¹ 253.

Where a person executes and delivers a deed of conveyance of equitable property to a volunteer, or where the legal estate is transferred and a trust of it is declared in favor of a volunteer, and there is nothing upon the face of the transaction or from contemporaneous evidence to show that it was intended to be revocable, or that a power of revocation ought to have been inserted, it cannot be revoked or avoided in any way. And even if the donor should procure a retransfer of stock by the trustees, and where it is in writing, should cancel the instrument, and by will make a provision for the same *cestuis que trust*, the settlement will be binding; and unless the subsequent provision is expressed to be substitutionary, the *cestuis que trust*, if the gift is not by way of portion, will take both; but they will have their election if it is expressed to be in substitution. And stock not being within the stat. 27 Eliz. c. 4, a purchaser of it from

Revocable-
ness of a
conveyance
of equitable
property or
a declara-
tion of trust
in favor of
a volunteer.

¹ St. § 1045, 1046.

the donor cannot avoid the voluntary settlement or gift.¹ 254.

The keeping in the donor's possession a deed so executed as to pass the estate, is not of itself sufficient to enable the donor to revoke it by cancellation or by will; for, the estate having passed, it would require the active interference of a Court of Equity to revest the estate; and it is no ground for such interference that the act was foolishly or inconsiderately done.² 255.

XVI. Effect of a direction or power to raise money out of rents for debts, etc.

XVI. Where a will contains a direction or power to raise money out of the rents and profits of an estate to pay debts or portions, etc., and the money must be raised and paid without delay, Courts of Equity have so construed those words as to give a power to raise by sale or mortgage, unless restrained by other words.³ 256.

XVII. Obligation of purchaser to see to the application of the purchase-money—General rules.

XVII. Prior to the enactments which will be presently mentioned, where real property was devised to be sold for, or was charged with, the payment of definite and ascertained sums only, and such payment was to take place at the time when the required amount was to be raised, the purchaser of such property was bound to see that the purchase-money was applied in the fulfilment of the trust, unless expressly exempted by a provision by the author of the trust. But where the property sold constituted the natural and primary

¹ 2 Sp. 882, 883, see *supra*, 193, 194.

² 2 Sp. 885.

³ St. § 1064, 1064 a; 2 Sp. 316.

fund for the payment of debts generally, or was expressly charged with, or conveyed or devised for, the payment of debts generally, and, therefore, in order to ascertain the sums to the payment of which the property was liable, it would be necessary for the purchaser to institute proceedings in Equity, or where the purchaser, if bound to see to the application of the money, would be involved in a trust of long continuance; then the purchaser, unless he had notice that there were no debts, or notice of fraud, was not bound to see to the application of the purchase-money.¹ 257.

In illustration of these rules, it may be observed that, as the personal estate, whether consisting of chattels personal or of chattels real, is liable at the Common Law, and constitutes the natural and primary fund for the payment of the debts of the testator generally, the purchaser of the whole or of any part of it, without notice that there were no debts, or that the sale was not made for payment of debts, was not bound to see that the purchase-money was applied by the executors in the discharge of the debts,² even if the testator had directed his real estate to be sold for payment of debts, whether specified or not, and had made a specific bequest of a part of his personal estate for a particular purpose, or to a particular person, although such specific bequest was known to the purchaser, provided he had no reason to suspect any fraudulent or unauthorized purpose; for,

Specific points in illustration of the above rules as to the purchaser's obligation.

¹ See St. § 1126, 1127, 1128, 1130-4; *Elliot v. Merryman*, 1 Lead. Cas. Eq., 2d ed. 45, *et seq.*

² St. § 1126, 1128; 2 Sp. 372, 377.

otherwise, before a person could become a purchaser of personal estate specifically bequeathed, it would be indispensable for him to come into a Court of Equity to have an account taken of the assets of the testator, and of the debts due from him, so as to ascertain whether it was necessary for the executor to sell.¹ 258.

The same rule, for the same reason, applied to real estate devised for or charged with the payment of debts generally;² even though the trust was only to sell, or was a charge for, so much as the personal estate was deficient to pay the debts, and even though a specific part of the real estate was devised for a particular purpose or trust, if the whole real estate was charged with the payment of debts generally by the will. If, however, the trustee has only a power to sell, and not an estate devised to him, then, unless the personal estate is deficient, the power to sell does not arise.³ 259.

Where, in cases of real estate, the trust was for the payment of legacies or annuities only, or of specified or scheduled debts alone, or of both, but not of debts generally, the rule was different; for they are ascertained, and the purchaser must therefore see that the money is duly applied. But where the devise was for payment of debts generally, and also for the payment of legacies or annuities, the purchaser was not bound to see to the application of the purchase-money, because, to hold him liable to see the legacies or annuities paid, would in fact have involved him in the ne-

¹ St. § 1129; 2 Sp. 375-7.

² St. § 1130; 2 Sp. 380, 382.

³ St. § 1131; 2 Sp. 382.

cessity of taking an account of all the debts and assets.¹ 260.

And the purchaser was not bound to see to the application of the purchase-money, where the specific objects of the trust were not pointed out.² 261.

But if there was collusion between the purchaser and the trustees, who were guilty of a misapplication, or if there was notice that the sale or mortgage was made for the purpose of a breach of trust, the estate was liable.³ 262.

In determining as to the liability of the purchaser, the Court looked to the deed or will alone, and not to the circumstances of the testator or to subsequent events; so that where a testator created a trust or charge for payment of debts generally and legacies, and there were no debts at the death of the testator, or the debts were paid after the death of the testator, and the legacies only were left as a charge, that circumstance alone did not prevent the application of the rule.⁴ 263.

Where the time appointed by the devise for a sale of real estate had arrived and the persons entitled to the money were infants or unborn, there the purchaser was not bound to see to the application of the purchase-money, because that might have involved him in a trust of long continuance. But if an estate was charged

¹ St. § 1132; 2 Sp. 379, 382, 386, 389.

² 2 Sp. 381.

³ 2 Sp. 384.

⁴ 2 Sp. 383; *Stroughill v. Anstey*, 1 D. M. & G. 653.*

* St. Eq. Jur. § 1132 a, see also *Andrews v. Sparhawk*, 13 Pick. 393; *Adams's Eq.* 156, note.

with a sum of money payable to an infant at his majority, the purchaser was bound to see the money duly paid on his coming of age; for the estate remained chargeable with it in his hands.¹ 264.

Where the money was to be applied by the trustees to purposes which required on their part, time, delay, and discretion, it seems the purchaser was not bound to see to the application of the purchase-money.² 265.

By the stat. 22 and 23 Vict. c. 35, s. 23, it is enacted that the *bond fide* payment to, and the receipt of any person to whom any purchase or mortgage-money shall be payable upon any express or implied trust, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security. By the stat. 23 and 24 Vict. c. 145, s. 12, it is also enacted that receipts for purchase-money given by the persons exercising the power of sale thereby conferred on mortgagees, shall be sufficient discharges to the purchaser, who shall not be bound to see to the application of the purchase-money. And by s. 29 it is also enacted that the "receipts in writing of any trustees or trustee, for any money payable to them or him by reason or in the exercise of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein expressed to be received, and shall effectually exonerate the persons paying such money from seeing to the application

¹ St. § 1133; 2 Sp. 387.

² St. § 1134; 2 Sp. 387.

thereof, or from being answerable for any loss or misapplication thereof." A general power to give receipts was provided by the stat. 7 and 8 Vict. c. 76, but it only extended from the 1st of January to the 1st of October, 1845, from which day it was repealed. 266.

XVIII. As long as the relation of trustee and *cestui que trust*, under an express trust, is acknowledged to exist, lapse of time can constitute no bar to an account or other proper relief for the *cestui que trust*.¹ And it may be observed that where a sum of money is bequeathed to an executor, upon trust, to be laid out on certain trusts, as soon as it is severed from the bulk of the estate, it ceases to be a mere legacy, and the bar of the Statute of Limitations does not apply; for it is then a case of express trust, which is specially excepted.² But when this relation of trustee and *cestui que trust* is no longer admitted to exist, or time and long acquiescence have obscured the nature and character of the trust, or the acts of the parties or other circumstances give rise to presumption unfavorable to its continuance, a Court of Equity will refuse relief upon the ground of lapse of time and its inability to do complete justice.³ 267.

By the Judicature Act, 1873 (36 and 37 Vict. c. 66, s. 25, par. (2)), "No claim of a *cestui que trust* against his trustee for any property held on an express trust, or in re-

XVIII.
When lapse
of time will
bar a *cestui
que trust*.

Statutes of
Limitation
inapplicable
to express
trusts.

¹ St. § 1520 a; 2 Sp. 48, 62; *Stone v. Stone*, L. R. 5 Ch. Ap. 74; *Thomson v. Eastwood*, L. R. 2 App. Cas. 215.

² 2 Sp. 62; *Thomson v. Eastwood*, L. R. 2 App. Cas. 215.

³ St. § 1520 a.

spect of any breach of such trust, shall be held to be barred by any Statute of Limitations." 268.

XIX. Trust performed as to the main intent. XIX. There are numerous instances in which the Court has caused the main intent, namely, the trust, to be performed, where the qualifications intended to secure its due performance have in fact presented obstacles to its being performed at all; as where the consent of a particular person is required, and such consent is perversely withheld, or cannot be obtained by reason of his infancy.¹ 269.

XX. Where legal and equitable estates have no separate existence. XX. The legal and equitable estates may coexist separately and distinctly in the same person, unless they are both coextensive and of the same quality; in which case the equitable estate will merge in the legal estate, or rather will so coalesce with it as to cease to have any separate existence.² 270.

XXI. Trust for an alien. XXI. A Court of Equity will enforce, in favor of the Crown, a trust of real estate for an alien created prior to the Naturalization Act, 1870.³ 271.

¹ 2 Sp. 45.

² See 2 Sp. 879, 880.

³ 33 Vict. c. 14; *Sharp v. St. Sauveur*, L. R. 7 Ch. Ap. 343.

CHAPTER IV.

OF EXPRESS CHARITABLE TRUSTS.(a)

I. CHARITIES are so highly favored in the Law, that charitable gifts have received a more liberal construction than gifts to individuals.¹
 272. Thus—

I. Charities favored.

1. In regard to the want of proper trustees, if a testator makes a bequest for charity to such persons as he shall afterwards name executors, or to such persons as his executors shall name, and he appoints no executors, or the executors die in the lifetime of the testator and no other are appointed, or if the trustees of a charitable legacy all die in the testator's lifetime, or if a corporation intrusted with a charity fails, the Supreme Court will execute the charity.² So if a legacy is given to persons who

In regard to the want of proper trustees:

¹ St. § 1165; 2 Sp. 246, 247.

² St. § 1165, 1166, 1177.

(a) On the subject of jurisdiction in case of Charities, the reader is referred to Mr. O. D. Tudor's valuable work on the Law of Charitable Trusts, 2d ed., and to Story's Eq. Jur. § 1142, *et seq.*, and the Act for the better regulation of Charitable Trusts, 16 and 17 Vict. c. 137, and the Acts to amend it, 18 and 19 Vict. c. 124, 23 and 24 Vict. c. 136, and 32 and 33 Vict. c. 110. And as to Roman Catholic Charities, see 23 and 24 Vict. c. 134. By these Acts jurisdiction has, in certain cases, been conferred upon the Chancery Judges in Chambers, the Court of Chancery of the County Palatine of Lancaster, and the Charity Commissioners.

have no legal corporate capacity to enable them to take as a corporation; as where a legacy is given to the churchwardens for a charitable purpose. And so if a corporation for whose use a charity is designed is not *in esse*, and cannot come into existence but by some future act of the Crown.¹ 273.

in regard to
defects in
convey-
ances: 2. The Supreme Court will supply all defects in conveyances, where the vendor is capable of conveying, and has a disposable estate, and the mode of conveyance does not contravene any statute.² 274.

in regard to
the objects: 3. In regard to the object, it matters not how uncertain the persons or objects may be. For if a bequest is made in the most general and indefinite manner simply for charitable uses, or religious and charitable purposes, *eo nomine*, the Supreme Court will treat it as a valid charitable bequest, and will dispose of it for such charitable purposes as it shall think fit. But where the bequest may, in conformity to the expressed words of the will, be disposed of in charity of a discretionary private nature, or be employed for any general benevolent or useful purposes, or for any general purpose, whether charitable or otherwise, or for charitable or other general purposes, at discretion, the bequest will be void as being too general and indefinite for the Court to execute, and the property will go to the next of kin. Hence if a man bequeaths a sum of money to such charitable uses as he shall direct by a codicil annexed to his will or by a note in writ-

¹ St. § 1169, 1170.

² St. § 1171.

ing, and he leaves no direction by note or codicil, the Court will dispose of it to such charitable purposes as it shall think fit.¹ But a bequest for such benevolent, religious, and charitable purposes, or for such charitable or public purposes, as the trustees should think most beneficial, is void.² And yet it has been held that a bequest for such charities and other public purposes in the parish of, etc., is a good charitable bequest, as it must mean public purposes for the benefit of that parish, and therefore would refer to charities within the meaning of the statute, 43 Eliz. c. 4.³ 275.

Where the giver has specified any particular charitable object, which is contrary to the policy of the Law, or from some other reason cannot be accomplished at all, or not in the way prescribed, the Court will devote the property to some other charitable purpose, if the nature of the gift, or the concurrence of other charitable gifts in the same instrument, indicates that, although the specified object was the favorite, yet it was not the exclusive object of the giver, but that he would have substituted some other charitable object, had he imagined that his favorite design might possibly be incapable of being accomplished. This is called the *cy prés* doctrine, and where the residue is given to charity, that will not oblige the Court to devote the particular gift which fails to the objects of

¹ St. § 1167.

² See St. § 1157, 1158, 1164, note 4 to 6th ed., 1167, 1169, 1183; *Wilkinson v. Lindgren*, L. R. 5 Ch. Ap. 570; *In re Kilvert's Trusts*, L. R. 12 Eq. 183; 7 Ch. Ap. 170.

³ *Dolan v. Macdermot*, L. R. 5 Eq. 60; 3 Ch. Ap. 676.

the residuary gift.¹ But where no such indication appears (as where the testator's object is to build a church at W, and that cannot be effected), the next of kin will take.² Where there are no objects *in esse*, but some may arise, the Court will keep the fund for them. And when there can be no such objects as those which are specified, or when the specified objects cease to exist, the Court will remodel the charity.³ 276.

4. In regard to surplus income, if a testator clearly shows an intention to devote the whole income of a property to charitable purposes, it will be so applied, although his specific charitable dispositions do not exhaust the whole income.⁴ And when the increased revenues of a charity are more than sufficient for the specified objects of charity, the surplus will not go to the heir-at-law or next of kin of the founder, but will be applied to the augmentation of the benefits of the charity, or to other charitable purposes.⁵ 277.

¹ Mayor of Lyons v. Advocate-General of Bengal, L. R. 1 App. Cas. 92.

² See St. § 1167-9, 1172, 1176, 1181, 1182; Russell v. Kellett, 3 Sm. & G. 264; Sinnett v. Herbert, L. R. 12 Eq. 201; reversed, L. R. 7 Ch. Ap. 232.*

³ St. § 1169, 1170, 1170 a, 1176; 2 Sp. 79.

⁴ 2 Sp. 248; Att.-Gen. v. Corp. of Beverley, 15 Beav. 540; 6 D. M. & G. 256, 265; 6 H. L. Cas. 310; Att.-Gen. v. Trin. Coll. Camb., 24 Beav. 383.

⁵ St. § 1178, 1181; 2 Sp. 248; Philpot v. St. George's Hospital, 27 Beav. 107; Re Ashton's Charity, Id. 115; Merchant Taylors' Comp. v. Attorney-General, L. R. 11 Eq. 35; 6 Ch. Ap. 512.

* The *cy prés* doctrines of the English Chancery have not been generally adopted in the United States in their application to charitable trusts. Adams's Eq. [69], note, and cases cited.

5. And to give another instance of the favor shown to charity, lapse of time is not an equitable bar in the case of charitable trusts.¹ 278.

In regard to
lapse of
time.

II. Where money is bequeathed to charitable purposes abroad, the Supreme Court will secure the fund, and cause the charity to be administered under its own direction, provided the charitable purposes are to be executed by persons residing within the jurisdiction of the Court.² But this will not be done if the objects of the charity are against Law or public policy, unless the principle of such policy or Law is of a national or conventional, rather than of a universal and moral or religious character.³ 279.

II. Charities
abroad.

III. It seems that, with a view to encourage the discovery of charitable donations given for indefinite purposes, it is the practice for the Crown to reward the persons who made the communication, if they can bring themselves within the scope of the charity, by giving them a part of the fund; and the like practice takes place also in relation to escheats.⁴ 280.

III. Reward
to inform-
ers.

IV. A charity cannot be altered by any new agreement between the heir of the donor and the donees.⁵ 281.

IV. Altering
charity.

¹ St. § 1192 a; Att.-Gen. v. Corp. of Beverley, 6 D. M. & G. 256, 265. But the Statute of Limitations, 3 and 4 Will. IV, c. 27, s. 24, applies to charities. Magdalen Coll. v. Att.-Gen., 6 H. L. Cas. 189; Att.-Gen. v. Davey, 4 D. & J. 136.

² St. § 1186, 1300.

³ See St. § 1184, 1185.

⁴ St. § 1192.

⁵ St. § 1175.

CHAPTER V.

OF IMPLIED TRUSTS.

Definition. AN implied trust is a trust which is founded on an unexpressed but presumable intention.¹ 282.

I. Effectuating the general intention of the donor of a power. I. Where, in the case of a will or other instrument, the donor of a power has a general intention in favor of a class, and a particular intention in favor of individuals of that class to be carried out by the donee of the power, and the particular intention fails, from its not being carried out by the donee of the power, the Court will treat it as a trust, and carry into effect the general intention in favor of the class.² 283.

Thus, if a fund is given to such of a certain class of persons, or to a certain class of persons in such proportions, as a third person shall appoint, if no appointment is made, the objects named will take equally.³

¹ See St. § 1195, 1254.

² St. § 1061 a; 2 Sp. 82, 420; *Harding v. Glyn*, 2 Lead. Cas. Eq., 2d ed. 805, *et seq.**

³ 2 Sp. 83; *Salisbury v. Denton*, 3 K. & J. 529; *Reid v. Reid*, 25 Beav. 469; *Re White's Trusts*, Johns. 656; *Lambert v. Thwaites*, L. R. 2 Eq. 151.†

* 1 Perry on Trusts, § 248-258.

† *Ib.*, § 251, 255.

But if a person, making no gift himself, merely empowers another to give property, the gift must be made, or no person can claim, though the persons to whom the intended gift was to be confined are named.¹ 284.

II. Where property is given upon trust, and the trusts fail, either entirely or partially, by reason of the failure of the intended objects or purposes, or some of them, or of the illegality or indefinite nature of the trusts, or some of them, or otherwise ; or where the trusts are fully and finally fulfilled, without exhausting all the property out of which they were to be fulfilled, there is a resulting trust of such property, or of so much thereof as remains unexhausted, to the person creating the trust, or to his heir or legal representatives, unless there is sufficient evidence or presumption of a contrary intention, or the trust is a charitable trust.² 285.

II. Where trust fails,

or the property is unexhausted by the trust.

But where there is an absolute, and, for anything that appears to the contrary, a beneficial gift, with an ineffectual or partial trust engrafted on it, the property, or so much as is unexhausted by such partial trust, will remain in the donee.³ And where there is an abso-

Absolute gift, with an ineffectual or partial trust or a void condition.

¹ 2 Sp. 84.

² St. § 1196 a, 1200 ; 1 Sp. 510 ; 2 Sp. 22, 80, 243-6 ; 1 Cru. T. 12, c. 1, § 55, 56 ; 1 Jarm. on Wills, 2d ed. 475, 482 ; Att.-Gen. v. Green Hill, 33 Beav. 193.*

³ See 1 Sp. 510 ; 2 Sp. 23, 80.

* See 1 Perry on Trusts, § 159, 160, 160 a ; Shaw v. Spencer, 100 Mass. 388 ; Easterbrooks v. Tillinghast, 5 Gray, 17.

lute gift, with an illegal condition, the condition is void, and the donee may retain the whole; as where a testator bequeathed leasehold property upon condition that the legatee should assign a particular part to a charity.¹ 286.

III. Convey-
ance with-
out a con-
sideration
and without
a use or
trust.

III. An implied resulting trust also arises where a conveyance, transfer, devise, or bequest of land or other property, without any consideration, express or implied, real or nominal, purports or is proved to have been made upon trust, but no distinct use or trust is stated.² 287.

If there are any circumstances to show that a trust was intended, then the onus of proof is on the donee, to prove that a beneficial gift to him was intended. If there are circumstances from which it can be made out that it would be a fraud in the grantee to retain the property as his own, parol evidence may be given of such circumstances. If no such circumstances exist, the conveyance or transfer, if perfect, will be regarded as a beneficial gift.³ 288.

If a devise is to an infant or a married woman, the presumption is against the devise being upon trust; yet this presumption must yield to the fair construction of the will, if, according to that, the testator appears to have intended a trust.⁴ 289.

A discretion as to the application of the property

¹ 2 Sp. 229.

² St. § 1197, 1199; 2 Sp. 57, 199, 225, 226; *Briggs v. Penny*, 3 Mac. & G. 546.

³ 2 Sp. 199.

⁴ 2 Sp. 225.

given may be so large, that the gift may amount to an absolute gift; as where there is an uncontrolled power to give away the property as and to whom the donee may think fit. But if the discretion is limited to certain general purposes, though they may be too indefinite to be enforced, the donee is a trustee.¹ 290.

IV. Where a person parts with or limits a particular estate only, and leaves the residue undisposed of, the residue results to him, even though there may be a consideration.² 291.

IV. Limitation of a particular interest only.

The heir will take, as personal estate, the benefit of the surplus interest in a term or other particular interest carved out of the inheritance for a particular purpose which does not exhaust the whole, as against the devisee, where the devisee takes only what remains after the particular interest so given is carved out.³ 292.

A legacy to the heir or next of kin will not of itself preclude their claim to the surplus undisposed of. Nor will a bare intention to exclude, however expressed, though accompanied by words of anger or antipathy or even negative words, be sufficient to exclude the heir in respect of the beneficial interest in real estate undisposed of, or the next of kin in respect of personalty, unless it is either specifically or as part of a fund effectually devised or bequeathed away to some one else, either directly, or by the same kind of necessary implication as would in other cases be admitted to constitute an actual gift.⁴ 293.

¹ 2 Sp. 225.

² St. § 1199.

³ 2 Sp. 230.

⁴ 2 Sp. 232.

V. Undis-
posed of
residue of
testator's
personal
estate.

V. Before the statute 1 Will. IV, c. 40, where a testator made no express disposition of the residue of his personal estate, the executors were at Law entitled to such residue; and Courts of Equity, as the Act recites, so far followed the Law, as to hold the executors to be entitled to retain such residue for their own use, unless it appeared to have been the testator's intention to exclude them from the beneficial interest therein. In that case, they were held to be trustees for the person or persons who would have been entitled to such estate under the Statute of Distributions, if the testator had died intestate. And Equity laid hold of any circumstance or expression in the will, which might appear to rebut the presumption of a gift to the executors, and convert them into trustees for those on whom the Law would have cast the surplus in case of a complete intestacy.¹ The stat. 1 W. IV, c. 40, furthers the views of Courts of Equity, in narrowing the application of the rule of Law, by enacting, as to wills made by persons who should die after the first day of September, 1830, that the executors shall be deemed by Courts of Equity to be trustees for the persons (if any) who would be entitled under the Statute of Distributions in respect of any residue not expressly disposed of, unless it should appear by the will, or a codicil

¹ See St. § 1208 and note; *Elcock v. Mapp*, 3 Cl. & Fin. 507, 508; *Underwood v. Wing*, 4 D. M. & G. 633, 656, 659; *Powell v. Merrett*, 1 Sm. & G. 381; *Cradock v. Owen*, 2 Sm. & G. 241; *Read v. Steadman*, 26 Beav. 495; *Saltmarsh v. Barrett*, 29 Beav. 474.

thereto, that the executors were intended to take such residue beneficially.¹ 294.

VI. Where real estate is directed to be sold for certain purposes, so much of the real estate, or the produce thereof, as is not effectually disposed of by the will at the testator's death, from silence, or the inefficacy of the will itself, or from subsequent lapse, results to the heir, unless the testator has sufficiently declared his intention that the produce of the real estate should be deemed personalty, whether such purposes take effect or not; and where the sale is necessary, it results to the heir as personalty; but where the sale is unnecessary, it results as part of the old use, and descends to him as realty.² If the testator directs, either expressly or by necessary implication, that the proceeds of the real estate shall be considered as having been converted into personalty before his death, and *a fortiori*, if he directs that "it shall be treated as personal estate for every purpose, whether disposed of by his will or not, and whether as regards legatees or next of kin," such a direction operates to give the next of kin, as against the heir, any portion of the proceeds that may lapse or may not be effect-

VI. Undisposed of produce of real estate.

¹ See *Harrison v. Harrison*, 2 Hem. & M. 237.

² 2 Sp. 233; *Ackroyd v. Smithson*, 1 Lead. Cas. Eq., 2d ed. 690, *et seq.*; *Taylor v. Taylor*, 3 D. M. & G. 190; *Robinson v. Governors of London Hospital*, 10 Hare, 19; *Buchanan v. Harrison*, 1 Johns. & H. 662, 675.*

* See also *Craig v. Leslie*, 3 Wheat. 577, 578, 579, where the whole subject is elaborately discussed in the opinion of the Court, delivered by Mr. Justice Washington.

ally disposed of.¹ But a mere direction that the proceeds of the real estate "shall be deemed part of the personal estate," or even that they shall be "considered to all intents and purposes part of the personal estate," or "shall be a fund of personal and not of real estate," or a reference to a mixed fund by the name of "personal estate," is not sufficient to give the surplus of the real estate to the next of kin. And any purpose, however limited (as payment of costs), apparent upon the face of the will, with reference to which the conversion might have been directed, is conclusive against the next of kin.² 295.

If a testator converts his real estate for all the purposes of his will, so as to affect the character of the property as between the real and personal representatives of persons taking under the will, that will not prevent the heir from taking any part which is undisposed of, by way of resulting trust.³ But what he so takes will vest in him as personal estate,⁴ unless the other parts are devoted to the payment of charges, and he chooses to pay them off, and thereby prevent the sale, and take the estate.⁵ 296.

Where real estate is not made a subsidiary fund, but a testator creates from real and personal estate a mixed and general fund, and directs the whole of that fund to be applied for certain purposes, as for the payment of debts and lega-

Undisposed
of part of
mixed fund.

¹ 2 Sp. 237.

² 2 Sp. 238; *Taylor v. Taylor*, 3 D. M. & G. 190; *Robinson v. Governors of London Hospital*, 10 Hare, 19.

³ 2 Sp. 234.

⁴ 2 Sp. 242.

⁵ 2 Sp. 234.

cies, there he in effect directs that the real and personal estates, which have been converted into that fund, shall answer the stated purposes *pro rata* according to their respective values. If any of those purposes fail, then the part of the fund which upon this principle would otherwise have been applicable to those purposes, is undisposed of. So far as that part of the fund has been composed of real estate, the heir is to have the benefit of it, as so much real estate undisposed of, whether the estate be eventually sold or not; and so far as that part of the fund has been composed of personal estate, it is personal estate undisposed of, for the benefit of the next of kin.¹ 297.

Where money is bequeathed to be laid out in land, the same principle applies as where land is directed to be converted into money; the conversion will operate only so far as the will disposes of the land into which it is to be converted; so that if the land is devised for a limited estate only, the produce of the fund, or the fund itself, if unconverted, beyond the interest so given, will result to the testator's next of kin, as personalty, unless it is given away to some other person.² 298.

Undisposed of part of money directed to be converted, or of the produce thereof.

Where real estate is settled by deed, upon trust to sell for certain specified purposes, and one of those purposes fails, there, whether the trust for sale is to arise in the lifetime of the settlor or not until after his decease, the property

Failure of objects for conversion under a deed.

¹ 2 Sp. 235.

² 2 Sp. 235; *Reynolds v. Godlee*, Johns. 536, 582.

to that extent results to the settlor, as personally, from the moment that the deed is executed, and not to his heir, either as real or as personal estate. For, the deed takes effect the moment it is executed, and a constructive conversion immediately takes place by force of the direction to convert, although the actual conversion is not to take place until after the settlor's death.¹ But where the whole of the purposes for which the conversion is directed fail from the moment of the execution of the deed, there the Court regards the case as if no conversion had been directed, and the property results to the grantor as real estate.² 299.

Where, in the events that happen, the contemplated object for which a conversion of land into money or money into land is directed by will to be made, does not exist, the Court will not vary the property from that state in which it was found at the death of the testator; for where the purpose fails, the intention fails.³ But where any event has happened on which the conversion ought to take place, though the object for the conversion afterwards ceases to exist, or partially fails, the property will be treated as if converted.⁴ 300.

Failure of
the object
for a con-
version un-
der a will.

¹ *Clarke v. Franklin*, 4 K. & J. 257.

² See Lord Eldon's remarks in *Ripley v. Waterworth*, 7 Ves. 435, and V.-C. Wood's remarks in *Clarke v. Franklin*, 4 K. & J. 265.

³ 2 Sp. 234, 261; *Buchanan v. Harrison*, 1 Johns. & H. 662, 673.

⁴ See 2 Sp. 262; *Bagster v. Fackerell*, 26 Beav. 469; *Wall v. Colshead*, 2 D. & J. 683.

VII. Implied trusts are often created by charges. Where a testator devises an estate or makes a bequest in trust to pay debts or other charges, no beneficial interest passes to the devisee, or legatee, but he is a mere trustee for the payment of debts or charges, and as to the residue, after payment thereof, a trustee for the heir or next of kin. But where property is devised or bequeathed, charged with or subject to debts or other charges, the whole beneficial interest passes to the devisee or legatee, subject only to the payment of the debts or other charges.¹ 301.

VII.
Charges.
Devise or
bequest in
trust to pay
debts and
charges.

Devise or
bequest
charged
with or sub-
ject to debts
and charges.

In the interpretation of wills, favor to creditors has been an acknowledged principle of construction.² And real estate may be charged by will with the payment of debts, even by a mere expression of an intention that the testator's debts should be paid, without any other indication that they are to be paid out of the real estate, and whether such expression is contained at the beginning of the will or in any other part. But if a testator directs a particular person to pay, it is natural to presume that the testator intended him to pay out of the funds with which he is intrusted, and not out of other funds over which he has no control; and if the executor is pointed

Indirect
charge of
debts.

¹ St. § 2245; 2 Sp. 23, n. (b), 226; *Heptinstall v. Gott*, 2 Johns. & H. 449; *Clarke v. Hilton*, L. R. 2 Eq. 810.*

² 2 Sp. 327, n. (g).

* See also *Craig v. Leslie*, 3 Wheat. 582, 583; 2 Perry on Trusts, § 559, *et seq.*

out as the person to pay, that ordinarily excludes any presumption that other persons, not named, are to pay, or that the debts are to be paid out of the real estate.¹ But when a will contains a direction to the executor to pay the testator's debts, and then a devise of real estate to him, it is considered that the testator has imposed upon the executor the duty of paying the debts to the extent of the property given to him, and accordingly the realty is held to be charged with the debts.² 302.

Extent of
charge.

Where lands are subjected by deed to payment of debts, they will stand charged with such debts only as were owing at the time of making the deed, unless a contrary intention appears on the face of the deed. But the reverse is the case where the charge is by will.³ 303.

Charge of
legacies.

If a legacy is given generally, the legatee must resort to the personal estate only.⁴ But it may be charged on real estate either expressly or by plain implication.⁵ Thus, where a testator makes a provision in the same clause for payment of debts and legacies together, the natural inference is that he intends both to be paid in the same way; and, there-

¹ See St. § 1246, 1247, 1247 a; 2 Sp. 320-2; *Silk v. Prime*, 2 Lead. Cas. Eq., 2d ed. 82, 95, *et seq.*

² *Harris v. Watkins*, Kay, 438; *Hartland v. Murrell*, 27 Beav. 204.*

³ 2 Sp. 352, 353.

⁴ 2 Sp. 327, 334, 342.

⁵ See 2 Sp. 327-9, 342.

* St. Eq. Jur. § 1087 b.

fore, if the debts are payable out of a mixed fund, so will be the legacies. So when a devise is made in a residuary form, and yet there is no previous devise, legacies are thereby made a charge upon the real estate; it being considered that the word residue must mean the residue of the real estate after payment of the legacies thereout. But even where there has been a previous devise, which was sufficient of itself to account for the residuary form of a subsequent devise, it has been held that such residuary form rendered legacies a charge upon the real estate, especially where the executor was residuary devisee.¹ 304.

A general charge of legacies on real and personal estate, even though expressed to be on "all the testator's estates of every description, both real and personal," will not render real or personal estate specifically devised or bequeathed liable to pecuniary legacies, in case of a deficiency in the personal estate, for, the specific devisee or legatee is as much an object of the testator's bounty as the pecuniary legatee.² 305.

Even where real estate is charged, it will not be held to be liable until after the general personal estate is

¹ 2 Sp. 328; *Silk v. Prime*, 2 Lead. Cas. Eq., 2d ed. 98, *et seq.*; *Francis v. Clemow*, Kay, 435, and cases there cited; *Harris v. Watkins*, Kay, 438; *Wheeler v. Howell*, 3 K. & J. 198; *Greville v. Browne*, 7 H. L. Cas. 689; *In re Brooke*, *Brooke v. Rooke*, L. R. 3 Ch. D. 630.*

² *Coote Mortg.*, 3d ed. 476; 6 Cru. T. 38, c. 16, § 21; *Conron v. Conron*, 7 H. L. Cas. 168.†

* 2 Perry on Trusts, § 570; *Tracy v. Tracy*, 15 Barb. 503.

† 2 Perry on Trusts, § 573; *Bardwell v. Bardwell*, 10 Pick. 19.

exhausted, unless there is an intention to exonerate the personal estate ;¹ as where nothing is given to the legatee, but a sum to be raised out of the real estate or where a portion of the real estate or its produce is appropriated as a fund for payment of the legacies.² 305 a.

Whether real estate is subject to debts or legacies, or both, by way of trust, or of charge, or of legal power in the nature of a trust, the estate can only be turned into money, and the proceeds distributed, in case of dispute or difficulty, through the agency of a Court of Equity.³ 306.

Where an authority to sell is given to a particular person, the vendee takes under the will ; any right or title in the heir is excluded, and there is no need of his joining in the sale.⁴ 307.

A charge for payment of debts gives the creditors a priority over the special purposes of the devise.⁵ 308.

Where the estate is charged with annuities, it is not the course to discharge the lands ; they will still be charged in the hands of a purchaser.⁶ 309.

Where annual and gross charges are to be raised out of the rents and profits or by sale or mortgage, if those words are evidently used in contradistinction, the annual charges will be raisable out of the annual rents and profits, and the gross charges by sale or mortgage.⁷ But a Court of Equity will in general consider a charge on the rents and profits to raise portions, legacies, or debts, as a charge on the land, if such charge is not restrained to the annual profits, and will imply a power

¹ 2 Sp. 338.² 2 Sp. 342.³ 2 Sp. 365.⁴ 2 Sp. 366.⁵ 2 Sp. 368.⁶ 2 Sp. 369.⁷ 2 Sp. 370.

to sell or mortgage.¹ And yet if no time for payment is appointed, as a general rule a sale will not be decreed, but it must be raised in the manner directed.² 310.

VIII. Where a person buys freehold, copyhold, or leasehold lands and pays the purchase-money for it, but takes the conveyance or assignment in his own name and that of another or others, or exclusively in the name of another or others whether jointly or successively, the trust of the legal estate will result to the person who advanced the purchase-money; for it is presumed that the real purchaser intended the purchase to be for his own benefit, and took it in the name of another or others merely to answer some collateral purpose. The same doctrine is applied to securities taken in the name of a third person.³ And proof of the payment of the purchase-money by the real purchaser may be furnished either by the language of the deed itself, or by some memorandum or note of the nominal purchaser, or by his admissions in legal proceedings, or by papers left by him and discovered after his death.⁴ 311.

VIII. Conveyance, assignment, or security in another's name.

In like manner there will be a resulting trust, where stock is purchased in the names of the purchaser and a stranger, or is transferred by the owner into the names of him-

Purchase or transfer of stock or delivery of money.

¹ 2 Sp. 406; Lord Londesborough v. Somerville, 19 Beav. 295; Metcalfe v. Hutchinson, L. R. 1 Ch. D. 591.

² 2 Sp. 406.

³ St. § 1201, 1201 a; 1 Sp. 511; 2 Sp. 201, 219: Dyer v. Dyer, 1 Lead. Cas. Eq., 2d ed. 165, *et seq.**

⁴ St. § 1201, note; 2 Sp. 202.

* Adams's Eq. 33, note.

self and a stranger. But if a man delivers money or transfers stock to another, even though he is a stranger, no implied trust will arise unless upon evidence.¹ 312.

No resulting trust will be raised where a contrary intention, unrebutted by other evidence or grounds of presumption, is indicated by the terms or the object and purpose of the instrument creating the trust, or is established by written or parol evidence, or may be presumed from the relation between the parties.² And hence, in general,

Where a resulting trust is rebutted; as where a purchase or security is taken in the name of a wife or child. there will be no resulting trust where a purchase is made or a security is taken by a husband or a father (either solely or jointly with his own name or that of a stranger) in the name of a wife, or in the name of a legitimate child, or an illegitimate child, if treated as a child, who is unprovided for, or considered by the husband or father as unprovided for, or as insufficiently provided for; or by a grandfather in the name of his grandchild unprovided for, or considered by him as unprovided for, or as insufficiently provided for, where the father is not living; or by a widowed mother in the name of her child; because it will be presumed that it was intended as an advancement and provision in discharge of a moral obligation, or as a tribute of affection; unless

¹ 2 Sp. 219.

² St. § 1196 a, note, and 1202; *Beecher v. Major*, 2 Dr. & Sm. 431.*

* As the resulting trust is mere matter of equitable presumption, it may be rebutted by facts that negative the presumption. See 1 Perry on Trusts, § 139, and cases there cited.

there are circumstances which furnish a strong presumption of a contrary intention; such as a contemporaneous declaration or act to manifest an intention that the party should take as a trustee. A subsequent act or declaration will not suffice to negative an advancement. Nor will possession or receipt of the rents by the person who advanced the money, where it may be fairly regarded as having been had as a trustee for the other party.¹ But the presumption of advancement may be negated by the oath of the husband or father that no advancement was intended;² or by his both receiving and applying the income in the same way as that of his general property.³ 313.

In other cases where the relationship is not such as to ground a presumption of advancement, the recognition of relationship and expressions of affection or regard ought to be looked to in determining whether a beneficial gift was intended.⁴ 314.

¹ *Dumper v. Dumper*, 3 Gif. 583; *Drew v. Martin*, 2 Hem. & M. 130; *Williams v. Williams*, 32 Beav. 370; *Tucker v. Burrow*, 2 Hem. & M. 515; *Sayre v. Hughes*, L. R. 5 Eq. 376; *Hepworth v. Hepworth*, L. R. 11 Eq. 10; *Stock v. McAvoy*, L. R. 15 Eq. 55; *Batstone v. Salter*, L. R. 19 Eq. 250; 10 Ch. Ap. 431; and see next paragraph.*

² *Devoy v. Devoy*, 3 S. M. & G. 403.

³ *Bone v. Pollard*, 24 Beav. 283. In *re Eykyn's Trusts*, L. R. 6 Ch. D. 115.†

⁴ St. § 1202-5, and note; 2 Sp. 214-219, 227, 228; *Jeanes v. Cooke*, 24 Beav. 513, 521.

* See also 1 Perry on Trusts, § 146, 147, and cases there cited.

† 1 Perry on Trusts, § 144, 147.

IX. Limitations which would create a joint tenancy at Law. IX. Limitations which confer an estate in joint tenancy at Law, have the same effect in Equity, when there are no circumstances which afford grounds for a departure from the rule of Law. So that where two or more persons purchase lands, and advance the money in equal shares, and take a conveyance to them and their heirs, this is a joint tenancy. But joint tenancy is not favored in Equity; indeed Courts of Equity will lay hold of any circumstances which will enable them to vary in this respect from their practice of following the Law.

Joint mortgage.

Thus, if two persons advance a sum of money by way of mortgage, and take a mortgage to them jointly, and one of them dies, his representatives will be entitled to his proportion as a trust. So if two

Joint purchase.

persons jointly purchase an estate, and pay unequal proportions of the purchase-money, and take the conveyances in their joint names; in case of the death of either of them, there will be no survivorship, but they will be deemed to be purchasers in the nature of partners, and to have intended to hold the estate in proportion to the sum which each advanced.¹ And where real or personal estate is purchased for partnership purposes in trade, and on partnership account, the legal estate, in whomsoever it may be vested, is in Equity deemed to be partnership property not subject to survivorship.² 315.

¹ St. § 1206; 2 Sp. 206, 207, n. (a), 214; *Lake v. Craddock*, 1 Lead. Cas. Eq., 2d ed. 145, *et seq.*

² St. § 1207; 2 Sp. 207; 2 Bl. Com. 399.

X. When a person has covenanted to lay out money in the purchase of land, or to pay money to trustees to be laid out in the purchase of land to be settled, if he afterwards purchases land to himself and his heirs, but does not settle it, the land will be subject to the trusts upon which the land to be purchased was to be settled; for, unless the contrary clearly appears, it will be presumed that he purchased in fulfilment of his covenant, upon the principle that acts capable of being considered as done in fulfilment of an obligation shall be so construed.¹ And where a trustee or agent is bound by a trust to lay out money in land, if he actually lay it out, the act will, if possible, be presumed to have been done in execution of the trust.* 316.

X. Covenant or trust to purchase lands.

XI. It is a general rule, that if a settlor covenant to convey and settle lands, without specifying any in particular, such covenant

XI. Covenant to settle lands.

¹ St. § 1210; 2 Sp. 204-6; *Wilcocks v. Wilcocks*, 2 Lead. Cas. Eq., 2d ed. 345, *et seq.*; *Blandy v. Widmore*, Id. 347, *et seq.**

* 2 Sp. 204-6; *Manningford v. Toleman*, 1 Coll. C. C. 670; *Ex parte Poole*, 11 Jur. 1005.

* Two rules of construction have been adopted by Courts; first, "wherever a trust is created, a legal estate, sufficient for the purposes of the trust, shall, if possible, be implied in the trustee, whatever may be the limitation in the instrument, whether to him or his heirs, or not." *Neilson v. Lagow*, 12 How. Sup. Ct. 98; *Sears v. Russell*, 8 Gray, 86. And second, "although a legal estate may be limited to a trustee, as to him and his heirs, yet it shall not be carried further than the complete execution of the trust necessarily requires." *Norton v. Norton*, 2 Sand, 296; see cases cited in 1 Perry on Trusts, § 312.

will not constitute a specific lien on his lands, and the covenantee will be deemed a creditor by specialty only,¹ for he may have intended to purchase land for the purpose, instead of settling any part of the land he then had. 317.

XII. Collateral securities for a debt assigned.

XII. Where an assignor of a debt has collateral securities for the debt, the assignee will be entitled to the full benefit of such securities, unless it is otherwise agreed between the parties. Thus, the assignee of a debt secured by a mortgage will, in Equity, be held entitled to the benefit of the mortgage.² 318.

XIII. Trust as to ornamental timber.

XIII. Equity implied a trust as to ornamental timber in favor of the objects of subsequent limitations. So that a tenant for life, or a tenant in fee, with an executory devise over, might be restrained from abusing his legal power, by cutting down ornamental timber, which is called equitable waste.³ 319.

By the Judicature Act, 1873,⁴ it is enacted that "an estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate." 319 a.

¹ St. § 1249.

² St. § 1047 a.

³ 2 Sp. 305; *Garth v. Cotton*, 1 Lead. Cas. Eq., 2d ed. 559, *et seq.*; *Turner v. Wright*, Johns. 740.

⁴ 36 and 37 Vict. c. 66, § 25 (3).

XIV. An implied trust arises in favor of the wife, when she joins with the husband in effecting a mortgage upon her property, and there is no recital and no special circumstances to show that her interest was intended to be changed beyond the creation of an incumbrance, and yet the equity of redemption is reserved to the husband.¹ 320.

XIV. Trust
of wife's
mortgaged
property.

¹ 2 Sp. 306; *Earl of Huntingdon v. Countess of Huntingdon*, 2 Lead. Cas. Eq., 2d ed. 838, *et seq.*

CHAPTER VI.

OF CONSTRUCTIVE TRUSTS.

IMPLIED trusts and constructive trusts, as already observed, are frequently confounded or classed together; and the same trusts are sometimes designated by the name of implied trusts, and at other times by that of constructive trusts.¹ 321.

Implied and constructive trusts often confounded.

But a constructive trust, as distinguished both from express and from implied trusts, may be defined to be a trust which is raised by construction of Equity, in order to satisfy the demands of justice, without reference to any presumable intention of the parties.² 322.

Definition of a constructive trust.

I. A constructive trust may arise where a person who is only joint owner, acting *bond fide*, permanently benefits an estate by repairs or improvements; for, a lien or a trust may arise in his favor, in respect of the sum he has expended in such repairs or improvements. So, where a person lawfully in possession under a defective title, has made

I. Repairs or improvements.

¹ 1 Sp. 509, note (a).

² See St. § 1195, 1254; 1 Sp. 509.*

* 1 Perry on Trusts, 112.

permanent improvements, if relief is asked in Equity by the true owner, he will be compelled to allow for such improvements; for, he who seeks for Equity must do Equity.¹ But if a tenant for life thinks fit, of his own discretion, or with the consent of trustees, to expend money in improvements, he is not entitled to have the money repaid out of the corpus; so that if he becomes the purchaser of the property, he will not be entitled to a deduction from the purchase-money in respect of the improvements.² 323.

II. So, where executors, by mistake, but *bond fide* and without fault, have paid legatees or distributees before a due discharge of all the debts, the latter are treated as trustees for the purpose of paying the debts; because they are not entitled to anything except the surplus of the assets, after all the debts are paid.³ 324.

II. Payment of legatees or distributees before creditors.

III. Where a person is under a covenant or agreement, for valuable consideration, to convey, transfer, or pay money or other property to or for the use or benefit of another, a constructive trust arises in favor of the latter against the former and his representatives, and those claiming under him as volunteers or with notice of the covenant or agreement; because, where things are covenanted, or agreed to be done, Equity treats them, for many purposes, as if they were done.⁴ 325.

III. Covenant or agreement to convey, transfer, or pay money or other property.

¹ St. § 1234-7; 2 Sp. 206; 2 Lead. Cas. Eq., 2d ed. 520; Kay v. Johnston, 21 Beav. 536.

² Dixon v. Peacock, 3 Drew. 288, 292.

³ St. § 1251; 2 Sp. 297.

⁴ See St. § 1212, 1231.

Hence, where the Court is satisfied by parol evidence that a marriage took place on the faith of representations as to a settlement, it will direct a settlement in accordance with those representations, as against the person making them or his devisees.¹ 326.

Nature of
and reasons
for, the
vendor's
lien. And so a constructive trust arises when the purchase-money of an estate is not paid. In such case the vendor has a lien on the property in Equity; that is, a hold upon it for the satisfaction of the purchase-money; and to the extent of the lien, the purchaser becomes a trustee for the vendor.² And although, in some cases, it is reasonable to presume a tacit consent or agreement that the vendor should have such a lien, yet the lien is not strictly attributable to such a consent or agreement, but is founded on the most obvious principles of natural justice.³ 327.

Where
originally
exists. In general, the vendor has such a lien; and the burden of proof is on the purchaser, to establish that in the particular case it has been intentionally displaced or waived by the consent of the vendor.⁴ Though, on the face of the conveyance, the consideration is expressed to be paid, and even if a receipt is indorsed on the back of the conveyance, and yet the money has not actually been paid, the vendor has a lien.⁵ And if a security has been taken for the

¹ *Prole v. Soady*, 2 Giff. 1.*

² See St. § 1215, 1217-1220; *Mackreth v. Symmons*, 1 Lead. Cas. Eq., 2d ed. 235, *et seq.*

³ See St. § 1219, 1220.

⁴ St. § 1224.

⁵ St. § 1225.

* St. Eq. Jur. 987 a.

money, the burden of the proof has been adjudged to lie on the purchaser, to show that the vendor agreed to rest on the security and to discharge the land; or, at most, the taking of a security has been deemed to be no more than a presumption, under some circumstances, of an intentional waiver of the lien, and not as conclusive of the waiver.¹ 328.

Where the vendor has a lien against the vendee, it continues, notwithstanding any devolution or transfer of the estate, except where it is extinguished by the countervailing Equity of a *bond fide* purchaser for valuable consideration without notice, when clothed with the legal title. 329.

- So that it exists against the vendee and his heir, and against volunteers claiming under him; against purchasers under him, with notice that he had not paid the purchase-money; against purchasers even without notice, having an equitable title only; against assignees claiming by a general assignment under the bankrupt and insolvent laws; against assignees claiming under a general assignment made by a failing debtor for the benefit of creditors; and against a judgment creditor of the vendee, at least before an actual conveyance of the estate has been made to him.² For, in each of these cases (except that of the *bond fide* purchaser for valuable consideration without notice, who has only an equitable title), the party in possession has obviously no more equity against the lien of the vendor, than the

Continu-
ance
thereof.

Against
whom it
exists.

¹ St. § 1226.

² See St. § 1228.

vendee himself had, but clearly stands in the same situation and subject to the same equity. And although the *bond fide* purchaser without notice, who has only an equitable title, has an equity quite distinct from that of his vendor, the first vendee, yet the equity of such purchaser to retain what he has paid for is only equal to that of the first vendor to be paid for that which he has parted with; and when the equities are equal, and neither of the parties has the support of the legal title, the maxim applies, *Qui prior est tempore, potior est jure*. 330.

But the lien will not prevail against a *bond fide* purchaser for valuable consideration from the vendee, where such purchaser has paid his purchase-money, and taken a conveyance of the legal estate, and had no notice, at the time of paying his money, that such vendee had not paid the purchase-money;¹ because, having given a valuable consideration for the estate, without notice, he has as much equity to retain what he has so paid for, as the original vendor has to be paid for that which he has parted with; and, having this equal equity, the Court will not take from him the legal title with which he has clothed himself, but will act upon the maxim, that where the equities are equal, the law shall prevail; so that in this case, the vendor's lien is virtually extinguished by the countervailing equity of the purchaser from the vendee. But where a vendee has sold the estate to a *bond fide* purchaser without notice, if the sub-purchase-money has not been

¹ St. § 1228, 1229.

paid, the original vendor may proceed against the estate for his lien, or against the sub-purchase-money in the hands of such purchaser.¹ 331.

Where the vendee has sold only a part of it, the part retained by him is primarily chargeable with the lien. Where he has sold different parts to different persons, the lien is to be borne ratably between them.² 332.

IV. If a trustee, or other person standing in a fiduciary relation, acquires property or makes a profit by means of transactions within the scope of his agency or authority, or if a person employs another's property in any trade or speculation, there will be a constructive trust, as to the property so acquired or the profits so made, for the benefit of the *cestui que trust*, principal, owner, or other party standing in the opposite relation.³ So that, if a trustee should purchase a lien or mortgage on a trust estate at a discount, he would not be allowed the benefit of the difference, but the purchase would be a trust for the *cestui que trust*. So if a trustee or a partner should renew a lease of the trust or partnership estate, he would be a trustee of such renewed interest for his *cestui que trust* or copartner, even though the lessor may have refused to grant a renewal to the

IV. Property acquired, or profits made by persons in a fiduciary relation.

¹ St. § 1232.

² St. § 1233 a.

³ See St. § 1211, 1211 a, 1261; 1 Sp. 512; 2 Sp. 208, 299, 300; Fox v. Mackreth, 1 Lead. Cas. Eq., 2d ed. 92, *et seq.*; Robinson v. Pett, 2 Lead. Cas. Ex., 2d ed. 206, *et seq.**

* 1 Perry on Trusts, § 197, and cases there cited; Staat v. Bergen, C. E. Green, 297, 308, 554, 559.

cestui que trust or copartner.¹ So if an agent, who is employed to purchase for another, purchases in his own name or on his own account, he will be held to be a trustee for the principal, at the option of the latter.² And the same principle applies as between a company and one of the directors.³ 333.

V. Renewal of lease by a person having a limited interest.

V. Upon analogous principles if a mortgagee or a person having a limited interest in leasehold property, renews the term on his own account, he will be held to be a trustee for all the persons interested in the old lease.⁴ 334.

The person so converted into a trustee of a renewed lease is entitled to the costs and expenses of renewal, with interest, and to compensation for repairing, building, and lasting improvement; and he may retain the renewed lease to secure the payment.⁵ 335.

VI. Wrongful conversion or alienation of trust property.

VI. In general, whenever property of one kind has been wrongfully converted into property of another kind, by a trustee or agent, the right *in rem* of the principal or *cestui que trust* ceases, if the means of ascertainment fail; which of course is the case when the subject-

¹ St. § 2211; 1 Sp. 512; 2 Sp. 208, 299, 300; *Keech v. Sandford*, 1 Lead. Cas. Eq., 2d ed. 36, *et seq.*; *Clegg v. Edmondson*, 8 D. M. & G. 787.*

² St. § 1211 a.

³ Liquidators of the Imperial Mercantile Credit Association v. Coleman, L. R. 6 H. L. 189.

⁴ 1 Sp. 512; 2 Sp. 299, 302, 303.

⁵ 2 Sp. 304.

* 1 Perry on Trusts, § 196, and cases there cited.

matter is turned into money, and mixed and confounded in a general mass of property of the same description. But if the property which has been so substituted can be ascertained to be such, it will be liable to the rights of the *cestui que trust* or principal to which the property converted was subject.¹ 336.

But in cases of this sort, the *cestui que trust* or beneficiary is not at all bound by the act of the other party. He has an option to insist on having that into which the trust property has been converted, or to disclaim any title thereto, and resort to any other remedy to which he is entitled, either *in rem*, or *in personam*.² But he cannot insist on repugnant claims; so that, in the case of a sale of stock by a trustee or executor, in violation of his trust, the party beneficially entitled may either oblige the trustee or executor to replace the stock, or he may affirm his conduct and take the sum at which he has sold it, with interest and any further profits he may have made by the sale; but the party beneficially entitled cannot insist on having the stock replaced, and having the interest instead of the dividends, or on taking the money, and having the dividends as if the stock had remained.³ 337.

If, however, the trustee conveys the trust property to a *bond fide* purchaser for valuable consideration, who has paid his purchase-money, and had no notice of the

¹ See St. § 1258, 1259, 1260; 2 Sp. 303; *Robinson v. Pett*, 2 Lead. Cas. Eq., 2d ed. 206, *et seq.**

² St. § 1262.

³ St. § 1263.

* *May v. Le Claire*, 11 Wall. 217.

trust at the time of paying the same, the trust is extinguished. But if the trustee should afterwards repurchase or otherwise become entitled to the same property, the trust would be revived by construction of Equity.¹ And if a trustee conveys or assigns the trust property for valuable consideration, in violation of the trust, to a person who is aware of that circumstance, or conveys or assigns it without valuable consideration, even to a person who has no notice, such person will be treated as a trustee for the *cestui que trust*. And an executor is deemed a trustee of the assets of his testator.² 338.

VII. Trust
of mort-
gaged estate.

VII. Where a person has a mortgage in fee which he has not foreclosed, the legal estate in the mortgaged premises descends to his heir; but by construction of Equity he is trustee for the personal representatives, and through them for the persons entitled to the personal estate of the mortgagee.³ 339.

VIII. Debt
due from
executor.

VIII. When a debt is due from an executor, he is converted into a trustee of the debt for the parties interested in the estate.⁴ 340.

¹ See St. § 1264, and note; 2 Sp. 40, 195, 196; *Basset v. Nosworthy*, 2 Lead. Cas. Eq., 2d ed. 1, *et seq.*

² St. § 1257; 1 Sp. 512; 2 Sp. 40, 195, 298.

³ 2 Sp. 296; *Thornborough v. Baker*, 2 Lead. Cas. Eq., 2d ed. 857, *et seq.*

⁴ 2 Sp. 296.

CHAPTER VII.

OF TRUSTEES AND OTHERS STANDING IN A
FIDUCIARY RELATION.

I. ALL persons who are natural-born British subjects,^(a) excepting persons attainted, but not excepting *femes covert* and infants, may be trustees.¹ And the Supreme Court will appoint a *feme sole* to be a trustee.² 341.

I. Who may be trustees.

II. If a person who is appointed executor proves the will, he becomes liable for the performance of the duties of the office; and if he is also appointed trustee, the taking probate is an acceptance of the entire trust.³ 342.

II. Acceptance of office.

III. If a man appoints a trustee of real or personal estate, without naming his heir or personal representative, the heir or personal representative does not become a trustee, although the property may vest in such heir or representative. And where two or more persons and the survivor and the heirs of the survivor are appointed trustees, and the

III. Devolution or delegation of a trust.

¹ 2 Sp. 32.

² In re Campbell's Trusts, 31 Beav. 176.*

³ 2 Sp. 918.

(a) As to aliens, see Smith's Compendium of the Law of Real and Personal Property, 5th ed., p. 1244, *et seq.*

* 1 Perry on Trusts, 51.

word "assigns" is not introduced, the sole or surviving trustee cannot delegate the trust either by act *inter vivos* or by devise.¹ A trustee cannot, without the consent of his *cestui que trust* or of the Court, denude himself of the character of trustee, till he has performed the trust. If, without such consent, he assigns the trust or delegates the performance of its duties to a stranger, he will be answerable for the breaches of trust committed by the assignee or stranger.² 343.

IV. It is a rule in Equity, which admits of no exception, that where a trust exists, a

IV. Equity
never wants
a trustee.

Court of Equity never wants a trustee. For wherever a perfect trust, as opposed to a trust resting in contract or in *fieri*, or even an imperfect trust, if supported by a valuable consideration, has once attached, whether it is an express, an implied, or a constructive trust, and it is not extinguished by the countervailing equity of a *bond fide* purchaser for valuable consideration without notice or other person having a conflicting equity, nor has otherwise ceased to subsist, Equity will follow the legal estate, and decree the person in whom it is vested to execute the trust.³ And the lapse of the legal estate never has the least influence on the trusts to which it is subject; if the individuals named fail, whether by death, incapacity, or

¹ 2 Sp. 38.*

² 2 Sp. 920.†

³ Sec St. § 976, 1159, 1162; 1 Sp. 501; 2 Sp. 51, 52, 369, 875, 876.‡

* 1 Perry on Trusts, § 294, 340.

† Ib. § 285, 287.

‡ Ib. § 45, 248, 427.

refusal, the Court will provide a trustee; if no trustees are appointed at all, the Court assumes the office in the first instance.¹ 344.

V. Trustees, executors, directors of private companies, and other persons standing in a similar situation, are not allowed, even with the consent of their co-trustees, co-executors, or coadjutors, and, however extraordinary the services they may have rendered, to take any remuneration by way of commission, or brokerage, or salary, without some express or implied provision for that purpose in the instrument under which they claim.² And a solicitor, who is a trustee, is not entitled to charge for business done by him in relation to the trust, as distinguished from costs out of pocket, although employed to do it by his co-trustee, unless there is a provision in the deed or will creating the trust, enabling him to receive remuneration for the transaction of such business.³ And even where there is a provision that a solicitor is to be at liberty to charge for his professional

V. No remuneration allowed.

¹ 2 Sp. 876.

² St. § 466 a, 1268; 2 Sp. 945, 946; *Barrett v. Hartley*, L. R. 2 Eq. 789.*

³ *Robinson v. Pett*, 2 Lead. Cas. Eq., 2d ed. 206, *et seq.*; *Broughton v. Broughton*, 2 Sm. & Gif. 422; 5 D. M. & G. 160.†

* The rule to disallow compensation to trustees has not been generally adopted in the United States. See *Meacham v. Sterne*, 9 Paige, 399; *Dewey v. Allen*, 1 Pick. 147; 1 *Perry on Trusts*, § 432. See also as to rules and rate of compensation in the various States, 2 *Perry on Trusts*, § 917 a, and note.

† 1 *Perry on Trusts*, § 432; *Morgan v. Homans*, 49 N. Y. 667.

services, he is only entitled to charge for services strictly professional, and not for matters which an executor or trustee ought to have done without the intervention of a solicitor; such as for attendances to pay premiums on policies, to make transfers at the bank, attendances on proctors, auctioneers, legatees, and creditors.¹ But trustees are entitled, without any express provision, to defray out of the trust funds expenses legitimately and properly incurred.^(a) 345.

Expenses
allowed.

VI. What
care and
diligence
they are
bound to
use.

VI. By analogy to the case of a gratuitous bailee, a trustee would seem to be liable only for gross negligence.³ 346.

Prima facie
view of the
decisions on
the subject.

On the other hand, it may appear that in practice Courts of Equity have in many cases required extreme circumspection and vigilance, while in others they have been satisfied with the degree of care usually exhibited by men in the management of their own affairs.⁴ 347.

True state
of the case.

But the true state of the case seems to be this: that there are certain things which either clearly appear in themselves to be duties, or are established as such by the uniform policy of Courts of Equity; and to these the Courts require a rigid adherence. But in regard to other points, the trustee is only required to use customary care and diligence; that

¹ *Harbin v. Darby* (No. 1), 28 Beav. 325.

² 2 Sp. 938. ³ St. § 1268.* ⁴ St. § 1272, 1273; 2 Sp. 917.

(a) The stat. 22 and 23 Vict. c. 35, s. 31, provides that the trust instrument shall be deemed to contain a clause as to reimbursement.

* See also 1 Perry on Trusts, § 441, *et seq.*

which is usually exercised by men of ordinary prudence and vigilance in the management of their own affairs.¹ 348.

Thus, if a trustee omits to sell property when it ought to be sold, and it is afterwards lost, although without any fault of his, he is liable; because the loss, although not directly occasioned by his default, would never have happened had he not failed in performing what must have appeared a palpable, although perhaps not an urgent duty.² 349.

Again, Courts of Equity are in the habit of directing property in their own possession to be invested in the £3 per cent. Annuities; and it became an established duty, on the part of trustees, to whom no discretion as to investments is given, to invest their trust moneys in those funds. And this rule, like an Act of Parliament, or any other kind of Law, was supposed to be well known, and no one was allowed to plead ignorance of it. If therefore a trustee invests, or even suffers money previously invested to remain, on unauthorized security, however unexceptionable it might seem to be, and such security afterwards fails, or if he permits choses in action to remain outstanding, and a loss arises, he will be liable; as also he will for the fluctuations of any unauthorized fund.³ £3 per

¹ See *Brice v. Stokes*, 2 Lead. Cas. Eq., 2d ed. 725, *et seq.*

² See St. § 1296, note; 2 Sp. 934.

³ See St. § 1296, note, 1273, 1274, note; 2 Sp. 923, 926, 934.*

* See 1 Perry on Trusts, § 455, 456, where the rule as to investments in the United States is fully stated. See also; *ibid.*, § 456, note, for consideration of cases that have been adjudged in the

cent. Consols is the fund which is usually selected by the Court for investment; but £3 per cent. Reduced is frequently resorted to for convenience, as when quarterly payments have to be made.¹ 350.

But where trustees are expressly authorized to invest in Government security, they are not bound to convert other kinds of Government stock into the £3 per cents., and it would seem that they may invest in any kind of Government stock.² And by the stat. 22 and 23 Vict. c. 35, s. 32, "when a trustee, executor, or administrator shall not, by some instrument creating his trust, be expressly forbidden to invest any trust fund on real securities, in any part of the United Kingdom, or on the stock of the Bank of England or Ireland, or on East India stock, it shall be lawful for such trustee, executor, or administrator, to invest such trust fund on such securities or stock; and he shall not be liable on that account as for a breach of trust, provided that such investment shall in other respects be reasonable and proper." By the stat. 23 and 24 Vict. c. 38, s. 12, it is enacted that this provision shall operate retrospectively. And by the stat. 30 and 31 Vict. c. 132, s. 1, it is enacted that "the words East India stock in the said Act passed in the session holden in the twenty-second and twenty-third years of her Majesty, chapter thirty-five, shall include and express as well the East

¹ 2 Sp. 552, note (a).

² *Baud v. Fardell*, 7 D. M. & G. 628.

late Confederate States, involving the legality of investments by trustees in the bonds and securities of the late Confederacy.

India stock which existed previously to the thirteenth day of August, one thousand eight hundred and fifty-nine, when the said Act received the assent of her Majesty, as East India stock charged on the revenues of India, and created under and by virtue of any Act or Acts of Parliament which received her Majesty's assent on or after the thirteenth day of August, one thousand eight hundred and fifty-nine; and it shall be lawful for every trustee, executor, or administrator, to invest any trust fund in his possession or under his control in the stock created by the last-mentioned Act or Acts to the same extent, and for the same purposes and objects, as he can now invest such trust fund in the East India stock which existed previously to the thirteenth day of August, one thousand eight hundred and fifty-nine." And by s. 2, "it shall be lawful for every trustee, executor, or administrator, to invest any trust fund in his possession or under his control in any securities, the interest of which is or shall be guaranteed by Parliament to the same extent and in the same manner as he may invest such trust fund in such securities as aforesaid."(*a*) 351.

According to the general understanding of the profession, and the general practice of the Court, where trustees are authorized to invest on mortgage of real estate, they are not justified in advancing more than two-thirds of the value of agricultural freeholds, or one-half of the value of freehold houses; and if the value

(*a*) See also ss. 10, 11, as to the investments authorized by the Court of Chancery by general orders. See also 23 and 24 Vict. c. 145, and 34 Vict. c. 27, as to investments.

depends upon fortuitous circumstances—for instance, if the property consists of a mill, or factory, or house situate in a watering-place, or the like—the trustees run the risk of having the mortgage thrown upon themselves, and of being made answerable for the money advanced.¹ And an authority to lend on such personal security as they shall think sufficient will not justify the trustees in lending it to the husband who is in trade, or indeed to a trading concern.² And an indemnity clause, declaring they shall not be liable for the insufficiency of any security, will not exonerate them from liability, if they lend on palpably inadequate security.³ 352.

A trustee is not authorized to sell out stock, and invest the proceeds on a mortgage to secure the re-transfer of such stock, and the payment of interest equal to the amount of the dividends.⁴ 353.

Trustees are bound to invest on securities of a permanent nature. So that even where trustees have power to invest as they think fit, they may not invest upon securities which at the time are commanding a higher rate of interest in consequence of their being determinable.⁵ 354.

¹ 2 Sp. 925; Remarks of Sir J. Romilly, M. R., in *Macleod v. Annesly*, 16 Beav. 605; *Budge v. Gummow*, L. R. 7 Ch. Ap. 719.*

² 2 Sp. 926.†

³ *Drosier v. Brereton*, 15 Beav. 221.

⁴ *Whitney v. Smith*, L. R. 4 Ch. Ap. 513.

⁵ *Stewart v. Sanderson*, L. R. 10 Eq. 26.

* 1 Perry on Trusts, § 457.

† Ib. § 454.

An executor will not be liable for money allowed to remain with bankers who fail, where it is not an unreasonable sum for executors to keep in the bank,¹ or where it was only reasonable for the money to be deposited there under the circumstances.² But he will be liable, if he places his money in the hands of a banker by way of investment, notwithstanding an indemnity clause against loss by a banker of money deposited for safe custody.³ 355.

Omission of trustee or executor to see that the property is duly secured or applied.

Again, where there are two or more trustees or executors, it is the duty of each trustee and executor to see that the property is duly secured or rightly applied, as the case may be. And therefore, as a general rule, if by the act, direction, agreement, or consent of one of them, the trust fund is paid over to the other, even though it was so paid over in order to be applied by the receiver for those purposes for which it was properly applicable, and the receiver wastes or misapplies it, each will be answerable for the whole; except in the case of money remitted to a co-trustee or co-executor, to be paid by him in his neighborhood, where the trustee or executor remitting the same, in case it had been his own money, would naturally have remitted it to some one to pay it away, instead of undertaking a

¹ *Swinfen v. Swinfen* (No. 5), 29 Beav. 211.*

² *Fenwick v. Clark*, 4 D. F. & J. 240.

³ *Behden v. Wesley*, 29 Beav. 213.†

* 1 Perry on Trusts, § 443, 446, and cases cited.

† *Ib.* § 446.

journey for the purpose of paying it himself.¹ And so if one trustee is allowed to retain the money, and he, against the remonstrances of the others, places it in the hands of solicitors to invest on mortgage, and the solicitors apply it to their own uses, the others will be liable.² So if one trustee improperly suffers the other to detain the trust money a long time in his own hands, without security, or lends it to the other, or joins or acquiesces in a loan of it to any one else, on insufficient security, each will be liable for the whole loss which may happen. And so if it is mutually agreed between them that one shall have the exclusive management of one part of the trust property, and the other trustee of the other part, each will be liable for any loss which may happen even to the part of which the other has the management ;³ because the party not acting was in default for giving the other the power and exposing him to the temptation to commit a breach of trust, instead of exercising that control over the property which it was his duty to exercise for the protection and due management thereof. 356.

Losses without want of customary care or diligence.

On the other hand, if a trustee or other person standing in a fiduciary relation has not failed in doing what must have appeared to be a palpable duty, and has invested the

¹ St. § 110 a, 1281, note, and 1284, and note ; 2 Sp. 370, n., 920, 934 ; Cowell v. Gatcombe, 27 Beav. 568.*

² Griffiths v. Porter, 25 Beav. 236.

³ St. § 1274, 1284 ; 2 Sp. 920, 922, 923, 932 ; Mendes v. Guedalla, 2 Johns. & H. 259.†

* See also 1 Perry on Trusts, § 402, 417, and cases cited.

† 1 Perry on Trusts, § 418, and cases cited.

property on authorized security, he will not be answerable for losses which happen without any want of customary care or diligence on his part.¹ So that if he deposits the money with a banker in good credit, to be remitted to the proper person by a bill drawn by a person in due credit, and the banker or drawer of the bill becomes bankrupt, he will not be responsible. The rule in all cases of this sort is, that where a trustee or executor acts by other hands, either from necessity, or conformably to the common usage of mankind, he is not to be made answerable for losses.² But it has been held that trustees who pay over the trust funds to a wrong party on a forged certificate are liable;³ and that a trustee or executor is liable for loss caused by the fraud, negligence, or other fault of his solicitor, although in employing such solicitor he may have exercised ordinary care and discretion.⁴ But the contrary was held in another case.⁵ And where a trustee employs a proper person to do a necessary act, and that person is the cause of an accident (as by felling a tree) for which the trustee is made to pay, the loss ought to be borne by the estate, and not by the trustee.⁶ 357.

¹ See St. § 1269, note, 1274, note, and 465; 2 Sp. 937.

² St. § 1269; 2 Sp. 933-5; In re Bird, Oriental Commercial Bank v. Savin, L. R. 16 Eq. 203.

³ Eaves v. Hickson, 30 Beav. 136.

⁴ Bostock v. Floyer, L. R. 1 Eq. 26; Hopgood v. Parkin, L. R. 11 Eq. 74; Sutton v. Wilders, L. R. 12 Eq. 373.

⁵ In re Bird, Oriental Commercial Bank v. Savin, L. R. 16 Eq. 203.

⁶ Bennett v. Wyndham, 4 D. F. & J. 259.

VII. Non-
investment.

VII. If trustees do not invest trust money when they ought to do so, even though they may make no profit by it, they are responsible, at the option of the *cestui que trust*, either for the money, and interest at £4 per cent., or the stock which might have been purchased therewith at the time when the investment ought to have been made, and the dividends.¹ 358.

VIII. Ter-
minable or
reversionary
property.

VIII. As a general rule, where a testator subjects the residue of his personal estate to succeeding limitations, directly or by way of trust, without any particular directions as to the investment or mode of enjoyment, or even with an authority to his trustees to allow the same state of investment to continue; there, in the absence of indications of a contrary intention, such part of the residue as may be wearing out (such as leaseholds), or may be invested in securities which yield a high rate of interest, but are not authorized by the Court, must be converted and put in such a state of investment as to be securely available for all persons interested in it. And if the residue comprises property of a reversionary nature, that also must be converted. The one rule protects the remainder-man, the other protects the tenant for life.² 359.

¹ St. § 1273 a; 2 Sp. 924; Att.-Gen. v. Alford, 4 D. M. & G. 843.*

² See 2 Sp. 42, 552-7; Howe v. Earl of Dartmouth, 2 Lead. Cas. Eq., 2d ed. 262, *et seq.*; Bate v. Hooper, 5 D. M. & G. 338; Boys v. Boys, 28 Beav. 436; Rowe v. Rowe, 29 Beav. 276; Brown v.

* 1 Perry on Trusts, § 469, and cases there cited.

IX. Where personalty is directed to be converted as soon as conveniently may be, there, as between the executor and the persons interested in the estate, the personalty is to be considered as converted within a year; that being considered as the time within which, in the generality of cases, it may be converted with ordinary diligence.¹ 360.

IX. Time allowed for conversion.

X. When a sum of stock is given to trustees in trust for a married woman for life, with remainder to her children, being infants, the Court will not ordinarily give its sanction to the fund being sold out and invested on mortgage, so as to give the tenant for life a greater income, though power may have been given to the trustees to lay out the property on real security, and though they join in the petition.² 361.

X. Investment on mortgage.

XI. It is the wise policy of Courts of Equity to guard against a breach of trust, by prohibiting all acts which may unnecessarily place the trustee in a situation of temptation.³ 362.

XI. Equity guards against a breach of trust.

Hence, in all cases in which a trustee keeps trust money in his hands, or in the hands of a banker, he should take care to keep it separate from his own. For if he were to mix it with his own in a common account, he would be

Trustee may not mix the trust money with his own.

Gellatly, L. R. 2 Ch. Ap. 751; Porter v. Baddeley, L. R. 5 Ch. D. 542; and other cases cited in Smith's Law of Prop., 5th ed., par. 3421.*

¹ 2 Sp. 42, 565, note (c). ² 2 Sp. 569. ³ See 2 Sp. 300.

* 1 Perry on Trusts, § 439.

deemed to have treated the whole as his own, and would be charged with interest, and would be liable to the *cestui que trust* for any loss sustained by the banker's insolvency.¹ If the trustee were at liberty to mix the trust money with his own, he would often be tempted to use it as his own, fully intending shortly to replace it; and frequently, indeed, he would not know whether the money with which he was carrying on his affairs was his own or not. In this way, he would be naturally led to expend the trust money on his own account, and loss to the trust property would frequently be occasioned. 363.

Similar observations may be made with respect to an agent.² 364.

XII. Trustee is accountable for interest and gains.

XII. Upon the same principle, a trustee or other person standing in a fiduciary relation, is never permitted to make any profit to himself from the property with which he is intrusted or from the office itself; if any advantage is gained by such a person, it belongs to the *cestui que trust*. Hence he is accountable for all the interest which he ought to have made, and would have made, by the investment of the property on the security directed by the instrument creating the trust, or, in the absence of any such direction as to the mode of investment, on the security authorized by the general rule of the Court. And he will also be accountable for any interest and gains beyond the amount of such interest

¹ St. § 1270; 2 Sp. 934. See *Cook v. Addison*, L. R. 7 Eq. 466.

² St. § 468.

as above mentioned, which he has actually made on, or with, or in regard to, the trust property, whether in the ordinary discharge of his duty, or in transactions entered into for his own benefit, as he supposed, or otherwise, if the amount of such extra interest and gains can be ascertained.¹

Or he will be made to pay interest at the rate of £4 or £5 per cent.² And, under extraordinary circumstances, the Court will direct annual or half-yearly rests to be made, so as to give the *cestui que trust* the benefit of compound interest; as, if a trustee, in manifest violation of his trust, has applied the trust fund to his own benefit and profit in trade, or has conducted himself fraudulently, or has wilfully refused to follow the positive directions of the instrument creating the trust as to the investment of the property.³ And if a trustee or particular agent purchases from his *cestui que trust*, even at a public auction, the *cestui que trust* has the option of taking to or repudiating the transaction; unless the *cestui que trust* intended that the trustee should buy, and there has been no fraud, con-

¹ See *supra*, par. 333, and St. § 465, 1211, 1261, 1269, note, 1277, 1278; 2 Sp. 300, 945; *Sugden v. Crossland*, 3 Sm. & G. 192; *Crosskill v. Bower*, 32 Beav. 86; *Chaplain v. Young* (No. 2), 33 Beav. 414.*

² 2 Sp. 921.†

³ St. § 1277; 2 Sp. 921.

* *Sloo v. Law*, 3 Blatch. 459; 1 *Perry on Trusts*, § 468, and cases cited. *Slade v. Van Vechten*, 11 Paige, 21.

† In the United States there is no law by which different rates of interest can be applied to different degrees of negligence. See 1 *Perry on Trusts*, § 468.

cealment, or advantage taken on the part of the trustee.¹

A person may indeed grant a beneficial interest, or make a present, to his trustee, agent, or receiver; but the latter must show that the dealing was fair, and that the grantor was perfectly free in the matter, and had the same knowledge as he himself had.² 365.

XIII. Responsibility for each other's acts and defaults.

XIII. A trustee (as in certain cases we have noticed, par. 356) is responsible for his own acts and defaults, and for those wrongful acts and defaults of his co-trustees to which he is privy, and in which, though without any corrupt motive, he expressly, tacitly, or virtually acquiesces, or which would not have happened but for his own act or default. Thus, if two trustees have properly sold out trust moneys, and one of them hands the check for the proceeds to the other, who misapplies the money, they are both liable.³ And so if two trustees execute a release for trust money, which is then received by one and invested by him on improper security, the other is liable; for it was his duty to see that it was properly invested.⁴ And where two trustees who were directed to invest on mortgage or in stock, retained money in a bank, and one died, and the other applied it to his own use, it was held that the

¹ 2 Sp. 300, 301, 943, 944; *supra*, par. 161; *Luff v. Lord*, 34 Beav. 220.

² 2 Sp. 301, 944; *Barrett v. Hartley*, L. R. 2 Eq. 789.

³ *Trutch v. Lamprell*, 20 Beav. 116; *Horton v. Brocklehurst* (No. 2), 29 Beav. 504.*

⁴ *Thompson v. Finch*, 22 Beav. 316.

* 1 Perry on Trusts, § 402.

estate of the former was liable, though the other might have sold out stock on the death of his co-trustee.¹ And the same rule applies to executors and other persons standing in a fiduciary relation. But trustees and others standing in a fiduciary relation are not otherwise responsible for the acts or defaults of each other.² 366.

There is, however, an important distinction in connection with this point, between the case of mere executors, and the case of trustees, which, nevertheless, does not militate against the application of the above-stated rule both to trustees and executors, but is founded in the different power with which they are legally invested, and amounts only to this: that a particular circumstance which would afford a presumption of the performance of an act involving responsibility, in the case of an executor, will not afford any presumption thereof in a case of a trustee. Thus, trustees have only a joint interest, power, and authority, and must all join both in conveyances and receipts;³ and yet it would be impracticable in some cases, and expensive and inconvenient in others, to require that all should together actually receive the trust money from the person by whom the same may be payable. Hence it cannot be inferred from a trustee joining in a receipt, that he has received any part of the money. But where there are co-executors, each has a several right to receive the debts due to the estate, and all other assets, and is

Distinction
between
trustees
and executors in regard to the effect of joining in receipts.

¹ *Gibbons v. Taylor*, 22 Beav. 344.

² 2 Sp. 918, 928.

³ *Lee v. Sankey*, L. R. 15 Eq. 204.

competent to give a valid discharge by his own separate receipt; and, therefore, if they join in a receipt, it is purely a voluntary act, and it will be presumed that they jointly received the money. 367.

In each case, however, the same rule applies as to responsibility for money received; although, in the one case, the party being a trustee, is not presumed to have done the act which would make him responsible, namely, the act of receiving the money; because the act done by him is as likely to have been a mere formal act as not; whereas in the other case, the party being an executor, is presumed to have done the act involving responsibility; because he has done that which an executor, who has not actually received the money, is not called upon to do.¹ 368.

The trustee indemnity clause does not
Trustee
indemnity
clause. exonerate a trustee from the consequences of a breach of trust.² Its insertion leads many, in ignorance of this, to accept a trust, and many others to be so remiss as to give their co-trustees the opportunity of committing breaches of trust, whereby such trustees are involved in Equity proceedings, which, however, often necessarily proves unavailing to remedy the loss occasioned to the *cestui que trust*.(a) 369.

¹ As to these passages respecting acts and defaults for which a trustee or other person standing in a fiduciary relation is responsible, see St. § 1280, 1280 a, and note; 2 Sp. 928, 929, 932; Brice v. Stokes, 2 Lead. Cas. Eq., 2d ed. 725, *et seq.**

² Brumridge v. Brumridge, 27 Beav. 5.

(a) The stat. 22 and 23 Vict. c. 35, s. 31, provides that trust instruments shall be deemed to contain these clauses.

* 1 Perry on Trusts, § 416, *et seq.*

XIV. "Every person who acquires personal assets by a breach of trust or a *devastavit*, by an executor, is responsible to those who are entitled under the will, if he is a party to the breach of trust. Generally speaking, he does not become a party to the breach of trust by buying, or receiving as a pledge for money advanced to the executor at the time, any part of the personal assets, even knowing them to be such, whether specifically given by the will or otherwise; because the sale or pledge is held to be *prima facie* consistent with the duty of an executor. Generally speaking, he does become a party to the breach of trust by buying or receiving in pledge any part of the personal assets, not for money advanced at the time, but in satisfaction of his private debt; because this sale or pledging is *prima facie* inconsistent with the duty of an executor."¹ And if an executor or administrator disposes of assets without a valuable consideration, the assets may be followed in specie, if distinguishable; but if the property so transferred is money and not distinguishable, and the person taking it knew it to be part of a testator's or intestate's estate, the creditors, legatees, or next of kin, have a personal demand, to the amount of the assets so disposed of.²

XIV. Breach of trust by an executor.

XV. Where executors or trustees are jointly implicated in a breach of trust, all of them should, if possible, be brought before

XV. Joint breach of trust.

¹ Per Sir John Leach, in *Keane v. Roberts*, 4 Mad. 357, cited St. § 580; see also 2 Sp. 373, 374, 379.

² 2 Sp. 379.

the Court, and should be made to contribute proportionably; especially where the trust property is to be brought back to be administered by the trustees, or where a general administration is involved.¹ 371.

But each of the trustees, who are jointly implicated in a breach of trust, is responsible for the entire loss, and liable to make it good (as in certain cases we have already noticed); so that the *cestui que trust* may, in case of need, proceed against any or either of them singly or separately, even against the less guilty.² And in such case, the trustee or trustees who may be so singly or separately compelled to make good the loss, may seek contribution from the others or other of them in another suit.³ 372.

XVI. Acquiescence in a breach of trust.

XVI. If *cestui que trust* has for a long time acquiesced in the misconduct of his trustee, with full knowledge of it, a Court, of Equity will not relieve him; for *vigilantibus non dormientibus, æquitas subvenit*.⁴ 373.

¹ See observations of L. C. B. Richards, In re Chertsey Market, 6 Price, 278; Perry v. Knott, 4 Beav. 179; Munch v. Cockerell, 8 Sim. 219; Devaynes v. Robinson, 24 Beav., note to p. 99. But see, *contra*, Ex parte Angle, Barn. 425.

² See Walker v. Symonds, 3 Swans. 75-8; Bradwell v. Catchpole, Id. 78, note. See also Rules of Court, 1875, Ord. xvi. r. 5; and Attorney-General v. Corporation of Leicester, 7 Beav. 176; Kellaway v. Johnson, 5 Beav. 319; Perry v. Knott, 4 Beav. 179; 5 Beav. 293; 2 Sp. 941.

³ See Lord Eldon's judgment in Walker v. Symonds, 3 Swans. 76-8; 2 Sp. 941.

⁴ St. § 1284 a.

XVII. The debt created by a breach of trust is only regarded as a simple contract debt, both at Law and in Equity, even where the trust arises under a deed executed by the trustees; unless the trustee who committed such breach of trust has acknowledged the debt under seal;¹ or unless by deed he has not merely accepted the trust, but has agreed or declared that he will execute the trusts.² 374.

XVII. Debt by breach of trust is a simple contract debt.

Money owing to a defaulting trustee as a beneficiary will be regarded as money paid by him out of money for which he has not accounted.³ 375.

Default by a trustee who is a beneficiary.

XVIII. A trustee may bind the estate by a conveyance to a *bond fide* purchaser, who had no notice at the time of paying his purchase-money:⁴ because, in that case, the trust is virtually extinguished by the countervailing equity of the *bond fide* purchaser. But if afterwards the trustee re-purchases or otherwise becomes entitled to the same property, the trust revives and re-attaches upon it.⁵ And so, if a trustee or executor transfers trust funds upon the trusts of a settlement made or to be made upon his or her marriage, and the opposite party to the marriage contract had no notice of the

XVIII. Power of trustee to bind the estate by a sale, etc.

¹ St. § 1285, 1286; 2 Sp. 936.

² Wynch v. Grant, 2 Drew. 312; Holland v. Holland, L. R. 4 Ch. Ap. 449.

³ Jacobs v. Ryland, L. R. 17 Eq. 341.

⁴ St. § 1264, and note; Basset v. Nosworthy, 2 Lead. Cas. Eq., 2d ed. 1, *et seq.*

⁵ St. § 1264.

fact that the party transferring was not beneficial owner of the funds, it has been held that the trusts of the settlement will attach upon the funds.¹ 376.

A purchaser has no right to a conveyance from trustees, where they had no right to sell at all, or not in the way in which they did sell, and where the purchaser was aware of that circumstance before he paid his purchase-money.² 377.

The trustee may bind the estate by a *bond fide* mortgage, or other specific lien, without notice of the trust. But the trust property will not be bound by any judgment or any other claim of creditors against the trustee.³ 378.

If, however, for a great number of years a trust for raising money remains unperformed, and a sale or mortgage is proposed to be made by the trustees, without an apparent reason for the sale or mortgage, and without the concurrence of the parties who are in possession and receipt of the rents, the purchaser or mortgagee is under some obligation to inquire and see whether the transaction is or is not a breach of trust.⁴ 379.

¹ Cooper v. Wormald, 27 Beav. 266.

² Dance v. Goldingham, L. R. 8 Ch. Ap. 902.

³ St. § 977.

⁴ Stroughill v. Anstey, 1 D. M. & G. 654.*

* 2 Perry on Trusts, § 797, 798. In the United States, where lands are holden for the payment of the testator's debts, a devise of lands for the payment of particular debts or legacies only can impose upon the purchaser no obligation to see to the application of the purchase-money. The strict English rule is not favored by the American courts. See Elliott v. Merryman, 1 Lead. Cas. Eq., 4th Am. ed. 40, American notes.

And if a person, though without any notice of a trust, and for valuable consideration, takes from a trustee a mere equitable estate, interest, or charge, when, for his own safety, he ought to have required a legal estate, interest, or charge, he cannot set it up against the *cestuis que trust*, where the trustee wrongfully created it.¹ 380.

Where a trustee is beneficially interested in part of a trust fund, and misapplies the other part, his own part is liable to make good the other part. And it has been held that this liability exists even as against an assignee of the trustee's part, who had previously put a *distringas* on it.² 381.

XIX. An executor or administrator is personally liable for the payment of debts in respect and to the extent of the personal assets. It is his primary and paramount duty, with all convenient speed, to pay the debts out of the personal estate. And he has full right either to mortgage or sell for payment of debts. And hence if the assets be sold or aliened by the executors or administrators, or any of them, for valuable consideration, the creditors cannot follow them; they are absolutely vested in the purchaser. And an executor or administrator may assign to a creditor and give him

XIX. Liability, duty, and power of executor or administrator.^(a)

¹ Shropshire Union Railways, etc. Co. v. The Queen, L. R. 7 H. L. 496.

² Wilkins v. Sibley, 4 Gif. 442.

(a) See stat. 23 and 24 Vict. c. 145, s. 30, as to powers of paying debts, compromising, compounding, and referring to arbitration.

a power of attorney to collect debts, to secure the payment of his, the creditor's own debt.¹ 382.

If an executor or administrator has, except under the direction of the Court, or except in the case provided for by the stat. 22 and 23 Vict. c. 35, s. 29, paid away the residue in ignorance of the existence of any debt, he is still liable.² But an executor or administrator fairly stating the facts, and paying over the assets under the direction of the Court in an administration suit, is fully indemnified against all existing or contingent demands on the estate.³ And by the stat. 22 and 23 Vict. c. 35, s. 29, "where an executor or administrator shall have given such or the like notices, as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the Court of Chancery in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof

¹ 2 Sp. 372, 373; *Earl Vane v. Rigden*, L. R. 5 Ch. Ap. 663.

² 2 Sp. 921.

³ *Waller v. Barrett*, 24 Beav. 413; *Bennett v. Lytton*, 2 Johns. & H. 155; *Williams v. Headland*, 4 Gif. 505.

so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively." And an executor has the same protection under this Act as under a decree.¹ 383.

This Act applies to claims of next of kin as well as to claims of creditors. And it affords protection to the sureties in an administration bond where the administrator has pursued the course prescribed.² 384.

By the stat. 22 and 23 Vict. c. 35, s. 30, trustees, executors, or administrators may apply, by petition or summons, upon a written statement, for the opinion, advice, or direction of a judge, on any question respecting the management or administration of the trust property, or the assets of any testator or intestate. 385.

One of two or more executors may settle an account with a person who is accountable to the estate, so as to bind the others and the estate; subject to any question of his liability to the parties beneficially interested for any impropriety of conduct; and subject to this also, that if there is any fraud or gross error in the settle-

¹ *Clegg v. Rowland*, L. R. 3 Eq. 368.

² *Newton v. Sherry*, L. R. 1 C. P. D. 246.

ment of account, it may be a ground for re-opening it.¹ 386.

After an administration decree, an executor can do no act to vary the rights of the parties; as by giving an acknowledgment to take a debt out of the Statute of Limitations.² 387.

XX. Trustees to support contingent remainders are peculiarly considered as honorary trustees for the benefit of the family, and as entitled to exercise a discretion for that purpose. And hence a Court of Equity, except in special cases, will not order them to join in conveyances which may affect or destroy the remainders. And, on the other hand, in those instances where they have so joined, after the first tenant in tail attained his majority, no judge in equity has gone the length of holding that he would punish them as for a breach of trust, even in a case where a Court of Equity would not have directed them to join. Where, however, before the first tenant in tail is of age, trustees join in destroying the remainders, they are liable for a breach of trust; and so is every purchaser under them with notice. In some few cases, however, Courts of Equity have compelled such trustees to join in conveyances which may affect or destroy the remainders, under peculiar circumstances of pressure, to discharge incumbrances prior to the settlement; or in favor of creditors, where the settlement was voluntary; or for the advan-

XX. Trustees to support contingent remainders.

¹ Smith v. Everett, 27 Beav. 446, 454.

² Phillippis v. Beal (No. 2), 32 Beav. 26.

tage of persons who were the first objects of the settlement ; as, for example, to enable the first son to make a settlement on an advantageous marriage.¹ 388.

XXI. Courts of Equity will assist the trustees, and protect them in the due performance of the trust, whenever they ask the aid and direction of the Court, as to the establishment, the management, or the execution of it.² And in cases of substantial doubt, it is best to ask for the direction of the Court.³ 389.

XXI.
Equity will
aid and di-
rect trus-
tees.

A trustee who commits a plain breach of trust is not protected from its consequences by the circumstance that he honestly took and followed the advice and opinion of his solicitor, whatever remedy he may have against his solicitor,⁴ or that he committed it with the view of saving his *cestui que trust* from ruin.⁵ A married woman, who by her entreaties has persuaded a trustee to commit a breach of trust to rescue her husband and family from ruin, has shortly afterwards made the trustee liable for that breach of trust, by filing a bill against him.⁶ 390.

Safety of
trustees.

A trustee is not in all cases to be made liable upon the mere ground of his having deviated from the strict letter of his trust ; for the deviation may be necessary or beneficial. But when a trustee ventures to deviate from the letter of his trust, he does so under the obliga-

¹ St. § 995-7 ; Lewin on Trusts, 4th ed. 285-292.*

² St. § 961.

³ St. 1276, note.

⁴ 2 Sp. 919.

⁵ See 2 Sp. 920.

⁶ 2 Sp. 920.

* 2 Perry on Trusts, § 522, 523. Not frequent in the United States, *ibid.*

tion and at the peril of afterwards satisfying the Court that the deviation was necessary or beneficial.¹ 391.

It is impossible ever to pronounce that a trustee or executor is safe from personal risk, unless he has acted in the execution of the trust under the directions of the Court,² or is protected by the stat. 22 and 23 Vict. c. 35, ss. 29, 30.³ 392.

A person who accepts the office of trustee, at the request of the *cestui que trust*, is entitled to be indemnified by the latter personally against all loss which may arise in the due execution of the trust.⁴ 392 a.

Notice to an executor of a possible contingent liability of his testator's estate (such as the possible insolvency of a company believed to be perfectly solvent), is not a sufficient reason for rendering it improper for him to distribute the estate without the direction of the Court; and if the liability afterwards becomes a debt, he will be entitled to call on the residuary legatees to refund the capital paid to them, but not the intermediate income.⁵ 393.

XXII. Muniments of title.

XXII. A trustee is entitled to have the muniments of title, and, in fact, it is his duty to keep them in his possession.⁶ 394.

¹ Harrison v. Randall, 9 Hare, 407.*

² 2 Sp. 49.

³ *Supra*, par. 383, 385.

⁴ Jervis v. Wolfertan, L. R. 18 Eq. 18.

⁵ *Ib.*

⁶ 2 Sp. 46.

* 2 Perry on Trusts, § 476. A trustee, however, may safely do that without a decree of the Court, which the Court, on a case made, would order or decree him to do, *ibid.*

Where there is any difficulty or danger, as regards the title-deeds of a trust estate, or the securities of a trust fund, the Court may provide for every such emergency, by ordering the deeds or the securities to be deposited in Court.¹ 395.

XXIII. If trustees are guilty of gross negligence, mismanagement, or misconduct, or if, from any cause, there is a failure of trustees qualified and willing to act, new trustees will be substituted by the Court.^(a)² And if a trustee becomes insolvent, it is a good ground for his removal.³ And the Court has even removed a joint trustee from a trust on the mere ground that the other trustees would not act with him; because if he were not removed, irreparable mischief might happen to the trust property or the *cestui que trust*.⁴ 396.

XXIII.
Equity will
remove
trustees and
appoint
others.

XXIV. In the case of a charitable trust, it seems that the Court will direct a power to appoint new trustees prospectively to be inserted in a deed appointing new trustees; but not in the case of a private trust, unless it is authorized by the instrument constituting the trust.⁵ 397.

XXIV. In-
sertion of
power to
appoint
new trus-
tees.

XXV. Before the stat. 1 Vict. c. 26, ss. 30, 31, trustees took the inheritance, in those cases where it was necessary, for the purpose

XXV.
Where trus-
tees took
the fee.

¹ 2 Sp. 46.

² St. § 1287, 1289.

³ *Harris v. Harris* (No. 1), 29 Beav. 107.

⁴ St. § 1288; 2 Sp. 943.

⁵ 2 Sp. 37.

(a) See stat. 23 and 24 Vict. c. 145, ss. 27, 28.

of a trust created by will, that they should take the inheritance. And in the case of a devise to trustees for sale, though only a part of the inheritance was required to be sold, yet the Court considered them as trustees of the whole inheritance.¹ 398.

XXVI.
Conveyance
of legal
estate to
cestui que
trust.

XXVI. When all the duties of a trustee are at an end, and this is clearly shown to him, and he has no notice of any disposition or incumbrances made by the *cestui que trust*, he must, on demand, convey the legal estate to his *cestui que trust*, at the peril of paying the costs of proceedings occasioned by his refusal. But in cases of real doubt or difficulty, a trustee, before he parts with his estate, is fully justified in requiring an indemnity from his *cestui que trust*, or in seeking the directions and indemnity of the Court.² 399.

XXVII.
Rendering
and settle-
ment of
accounts.

XXVII. A trustee is entitled to have his accounts examined, and to have a settlement of them. He is also bound to render proper accounts, if demanded, and to be always ready with them. If the *cestui que trust* is satisfied that nothing more is due to him, he ought to close the account, and give an acknowledgment equivalent to a release, though the trustee cannot oblige the *cestui que trust* to give a release under seal. On the other hand, if the *cestui que trust* is dissatisfied with the accounts, he ought to require to have the accounts taken. He is bound to adopt one of these two courses; he is not

¹ 2 Sp. 295.

² 2 Sp. 48.*

* 1 Perry on Trusts, § 922 *et seq.*

at liberty to keep proceedings hanging for an indefinite time over the head of the trustee.¹ 400.

A trustee or executor is bound to render every necessary information, and, if he have not all the necessary information, he is bound to seek for it, and, if practicable, to obtain it. (a)² 401.

Duty of rendering other information.

Executors must be allowed a reasonable time for breaking up a testator's domestic establishment, and discharging his servants.³ 402.

Breaking up testator's establishment.

¹ 2 Sp. 46, 47, 921; *Kemp v. Burn*, 4 Giff. 348.*

² 2 Sp. 921; *Talbot v. Marshfield*, L. R. 3 Ch. Ap. 622.

³ *Field v. Peckett* (No. 3), 29 Beav. 576.

(a) On the subject of Trusts and Trustees, see stat. 1 Will. IV, c. 60; 13 and 14 Vict. c. 60; 15 and 16 Vict. c. 55; 10 and 11 Vict. c. 96; 12 and 13 Vict. c. 74; 22 and 23 Vict. c. 35; and 23 and 24 Vict. c. 38, s. 145.

* 2 Perry on Trusts, § 900.

CHAPTER VIII.

OF THE SPECIFIC PERFORMANCE OF AGREEMENTS
AND DUTIES NOT ARISING FROM TRUSTS.I. Remedy
at Law.

I. By the Common Law, if a party who ought to perform a contract or covenant, fails to do so, no redress could be had, except in damages.¹ 403.

II. A specific
perform-
ance will be
decreed in
Equity,
where
damages
would not
afford com-
pensation.

II. In Equity a specific performance of a contract, covenant, or duty, will be decreed, where damages would not afford an exact compensation for the non-performance thereof, whatever may be the form or character of the instrument containing such contract or covenant, or giving rise to such duty. And hence it will be decreed in all cases of contracts for the purchase of land; because the local character, vicinage, soil, easements, or accommodations of the land, may give it a peculiar value in the eyes of the purchaser; so that damages, which would enable the purchaser to buy other land, of the very same marketable value, would not or might not be a complete compensation. And if a bond is entered into, with a penalty, Equity will not regard it as an option to do the act required or pay the penalty, but as an agreement to do the act

¹ St. § 714.

at all events, of which it will enforce a specific performance.¹ 404.

III. But Equity will not interfere where damages at Law would amount to a complete compensation. Hence specific performance of articles of apprenticeship would not be decreed.² And a performance of a contract for the sale of stock or goods will not be enforced in ordinary cases; because damages at Law, calculated on the market price of the stock or goods, are generally equivalent, in point of value, to the delivery of the stock or goods contracted for; inasmuch as, with the damages, the purchaser may ordinarily buy stock or goods of the same kind and of the same value to himself. But a performance of a contract respecting stock, goods, or personal property, will be enforced, where damages at Law could not afford a complete compensation.³ And where the specific performance of a contract respecting chattels will be decreed on the application of one party, on the ground that damages would not be a complete

III. Not where they would afford a complete compensation.

¹ St. § 715, 717, 718, 739-742, 746, 751, 783-6, 850, 1425.

² *Webb v. England*, 29 Beav. 44; *Crompton v. Varna Railway Co.*, L. R. 7 Ch. Ap. 562; *Wilson v. Northampton, etc., Railway Co.*, L. R. 9 Ch. Ap. 279.

³ St. § 717-720, 746; *Falcke v. Gray*, 4 Drew. 651; *Cuddee v. Rutter*, 1 Lead. Cas. Eq., 2d ed. 640, *et seq.*; *Dowling v. Betjemann*, 2 Johns. & H. 544.*

* In *Falcke v. Gray*, the articles sold were two china jars, which were so nearly unique that it was impossible to say what price they would bear in the market; this seems to be the ground of distinction in such cases.

compensation to him, Equity will entertain the like suit at the instance of the other party, though the relief sought by him is merely in the nature of a compensation in damages or value; for, in all cases of this sort, the Court acts on the ground that the remedy ought to be mutual.¹ The same rules apply to agreements respecting personal acts, for the non-performance of which an exact compensation may sometimes be made by way of damages, while in others it cannot.² 405.

IV. At Law contracts and covenants are considered merely as personal and executory,

but in Equity as performed in regard to consequences.

IV. At Law, contracts and covenants to sell, convey, or transfer land or other property, are considered simply as personal and executory contracts and covenants, and not as attaching to the property in any manner as a present or future charge or otherwise.³ But in Equity, from the time of a contract for the sale of land, the vendor, and his heirs, and any one claiming as a subsequent purchaser under him, become as to the land, trustees for the purchaser and his heirs, devisees, or vendees; and the purchaser and his personal representatives become, as to the money, trustees for the vendor and his personal representatives.⁴ 406.

A vendor of land may receive the balance of the purchase-money, and convey the estate to the pur-

¹ St. § 723.

² St. § 722-9.

³ St. § 714, 790.

⁴ St. § 788, 789, 790; except as far as the case is altered by the stat. 17 and 18 Vict. c. 113, 30 and 31 Vict. c. 59, and 40 and 41 Vict. c. 34, *infra*, par. 481, 485, 486.

chaser, without regard to the receipt of a mere notice that the purchaser had agreed to assign the contract.¹ 407.

Every payment of purchase-money to the vendor transfers, in Equity, to the purchaser, a corresponding proportion of the estate. And hence, where the purchase-money is to be paid by instalments, and the purchaser has paid some instalments, and then declines to complete, and is absolved from the liability to complete the purchase, owing to the default of the vendor, the purchaser has a lien on the estate for the money he has so paid, as against the vendor, and every mortgagee of the vendor who simply gives him notice of his mortgage, without attempting to prevent the completion of the contract or the payment of the instalments.² 408.

In like manner, land directed, articted, conveyed, or devised to be sold and turned into money, is reputed as money; and money directed, articted, assigned, or bequeathed to be invested in land, has in Equity many of the qualities of real estate, and in particular is descendible and devisable as such.³ But the person for whose benefit the conversion is to be made, may elect to take the property in its unconverted state. And this election he may make as well by acts or

Land articted or devised to be sold, and money articted or bequeathed to be invested in land.

¹ *McCreight v. Foster*, L. R. 5 Ch. Ap. 604; s. c. nom. *Shaw v. Foster*, 5 H. L. 321.

² *Rose v. Watson*, 10 H. L. Cas. 672.

³ St. § 790; *Fletcher v. Ashburner*, 1 Lead. Cas. Eq., 2d ed. 659 *et seq.*; *Dixie v. Wright*, 32 Beav. 662.*

* *Craig v. Leslie*, 3 Wheat. 563, 577; *Taylor v. Berham*, 2 How. Sup. Ct. 234.

declarations clearly indicating a determination to that effect, as by an application to a Court of Equity.¹ But where it has vested in two or more persons, one cannot elect without the others or other.² 409.

In general, Courts of Equity do not incline to change the quality of the property as the testator or intestate has left it, unless there is some clear act or intention by which he has unequivocally fixed upon it throughout a definite and different character.³ 410.

V. Specific performance decreed between persons claiming under the parties.

V. Where the specific execution of a contract respecting lands would have been decreed between the parties, it will be decreed between all parties claiming under them in privity of estate, representation, or title, unless other controlling equities have intervened.⁴ Hence, if the vendor, before completion, dies intestate as to his realty, his legal personal representative may maintain a suit against his heir and the purchaser for a specific performance;⁵ where the heir of the purchaser came into Equity for a specific performance, he might in general require the purchase-money to be paid out of the personal estate of the purchaser in the hands of his personal representatives.⁶ 411.

Purchaser's heir may require the money to be paid out of the personal estate.

¹ St. § 793, 1213.

² *Holloway v. Radcliffe*, 23 Beav. 163.

³ St. § 1214, 1214 a.

⁴ St. § 788.

⁵ *Hoddel v. Pugh*, 33 Beav. 489. And, before the stat. 17 and 18 Vict. c. 113, 30 and 31 Vict. c. 69, and 40 and 41 Vict. c. 34, *infra*, par. 481, 485, 486.

⁶ St. § 790.

VI. If the terms of an agreement, either through negligence or otherwise, have not been complied with in particulars which do not pertain to the essence of the contract, or if there has been a slight misdescription of the property, Courts of Equity will nevertheless decree a specific performance in favor of the party chargeable with non-compliance or misdescription, if compensation can be made for an injury that may have been occasioned by the non-compliance or for the misdescription of the property.¹ 412.

VI. Non-compliance with terms of agreement in non-essential particulars, or slight misdescription.

At Law, time was of the essence of the contract. But in Equity it is held to be of the essence of the contract only in cases of direct stipulation that it shall be so considered, or where it is obviously so from the nature of the case; as where a reversion is sold, or where the property sold is required for some immediate purpose, as trade or manufacture, or is in its nature of a fluctuating value, or is of a determinable character, as an estate for life, or the dealing is with an ecclesiastical corporation. And even where time is of the essence of the contract, it may be waived by proceeding in the purchase after the time has elapsed. On the other hand, although time may not be originally of the essence of the contract, still either party may, by a proper notice, bind the other to complete within a reasonable time.² 413.

¹ See St. § 747, 748, 771, 775-777, and notes; *Seton v. Slade*, 2 Lead. Cas. Eq., 2d ed. 429, *et seq.*

² *Parkins v. Thorold*, 16 Beav. 65; *Hudson v. Temple*, 29 Beav. 536; *Wells v. Maxwell* (No. 1), 32 Beav. 408; *Lord Ranelagh v.*

Stipulation
not of the
essence of
contracts.

By the Judicature Act, 1873, s. 25 (7),¹ "Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in Equity." 414.

VII. Want
of title, or a
substantial
misdescription,
or
want of
reasonable
compliance
with agree-
ment.

VII. Where the vendor is incapable of making a complete title to all the property sold, or there has been a substantial misdescription in important particulars, or the terms have not been reasonably complied with on the part of the vendor, Courts of Equity will generally allow the purchaser to proceed with the purchase, *pro tanto*; that is, to have the contract specifically performed as far as the vendor can perform it, and to have an abatement made out of the purchase-money or a compensation. This right to an abatement may be excluded by express condition, even for a deficiency of nearly half, if the purchaser seeks specific performance, though the Court would not enforce specific performance against him.² But where

Melton, 2 Dr. & Sm. 278; Sugd. V. & P., 14th ed. 257, *et seq.*; St. § 776; 2 Lead. Cas. Eq., 2d ed. 442, *et seq.*; Tilley v. Thomas, L. R. 3 Ch. Ap. 61; Cowles v. Gale, L. R. 7 Ch. Ap. 12.*

¹ 36 and 37 Vict. c. 66.

² St. § 779; Sugd. V. & P., 14th ed. 305; 2 Lead. Cas. in Eq., 3d ed. 498, 499; Hughes v. Jones, 3 D. F. & J. 307, 315; Cor-

* Brashier v. Gratz, 6 Wheat. 528; Taylor v. Longworth, 14 Peters, 173.

the land is less than the quantity stated, by a very large proportion, the course is to allow the purchaser to rescind the contract.¹ 415.

If a person professes to be the owner of the fee simple, and undertakes to sell it, but he is not able to do so, and the purchaser was not aware of his inability, he must convey as much as he can, if the purchaser desires it, and submit to an abatement of the purchase-money. But where husband and wife agree to sell what the purchaser is aware is the wife's estate in fee, and the wife afterwards refuses to convey, the purchaser cannot compel the husband to convey his interest, and accept an abated price.² 416.

VIII. Where a man has performed a valuable part of an agreement, but is incapable of performing the remainder, by a subsequent accident, without any default on his part, Courts of Equity will enforce the agreement in his favor (allowing such compensation as may be just) in case he is not *in statu quo* as to the part which he has performed, but not otherwise.³ 417.

VIII. Accidental incapacity of performing the remainder of an agreement.

IX. In some cases, a performance of an agreement will be decreed, not according to the letter of the contract, if that would be

IX. Performance *sub modo*.

dingly *v.* Cheeseborough, 4 D. F. & J. 379; Hooper *v.* Smart, L. R. 18 Eq. 683.*

¹ Earl of Durham *v.* Sir F. Legard, 34 Beav. 611; Aberaman Ironworks *v.* Wickens, L. R. 4 Ch. Ap. 101.

² Castle *v.* Wilkinson, L. R. 5 Ch. Ap. 534.

³ St. § 772, 796, 797.

* Waters *v.* Travis, 9 Johns. 465.

unconscientious, but according to the change of circumstances.¹ 418.

X. Agreement not enforced, where the parties were incompetent to contract.

X. Of course, an agreement entered into by parties incompetent to contract, such as infants and *femes covert*, will not be enforced against them. Nor will it be enforced in favor of such parties; because the remedy ought to be mutual.² 419.

XI. Nor where the terms are not certain and definite.

XI. Nor will Courts of Equity enforce a contract, although it is written, if the terms are not certain and definite in themselves; for, in such a case, they might decree precisely what the parties did not intend; and besides this, if any terms are to be supplied, it must be by parol evidence; and the admission of such evidence would let in all the mischiefs intended to be guarded against by the Statute of Frauds.³ 420.

XII. Enforcing voluntary deeds.

XII. Courts of Equity will enforce an obligation imposed by will, without any consideration.⁴ But they will not enforce, either against the party himself, or any volunteers claiming under him, any contract or any imperfect gifts *inter vivos* (not being donations *mortis causâ*), or imperfect assignments of debts or other property, or executory trusts raised by a covenant or agreement, or defective or imperfect settlements or conveyances, which are not founded in a valuable consideration, even though the

¹ St. § 775.

² St. § 787, 851, note; *Vansittart v. Vansittart*, 4 K. & J. 62.

³ St. § 767; *Taylor v. Portington*, 7 D. M. & G. 328.

⁴ 2 Sp. 255.

transaction be founded on a meritorious consideration, as in the case of a provision for a wife or child; that is, Equity will not enforce them so far as something is sought beyond that which may be recovered under them at Law, although it will, if necessary, give effect to any legal obligation created by them. But if a transfer, assignment, trust, settlement, or conveyance is complete, so that no act remains to be done to give full effect to the title, Equity will enforce it throughout against the party making or creating it, and his representatives, although it be merely voluntary.¹ And simply to sign a declaration of trust in favor of the donee, is an effectual mode of effecting a voluntary transfer. And if a person directs by letter, though not for valuable consideration, an executor to pay over to another the share to which such person is entitled, and the letter is acted upon by the executor, it will operate as an assignment.² 421.

¹ St. § 433, 787, 793, a, b, 973; 1 Sp. 507; 2 Sp. 52, 57, n (e), 129, 254, 255, 285, 889-893, 898, 899, 907, 909-915; *Fletcher v. Fletcher*, 4 Hare, 67; *Voyle v. Hughes*, 2 Sm. & G. 18; *Bridge v. Bridge*, 16 Beav. 315; *Weale v. Ollive*, 17 Beav. 252; *Scales v. Maude*, 6 D. M. & G. 43; *Dening v. Ware*, 22 Beav. 184; *Tatham v. Vernon*, 29 Beav. 604; *Beech v. Keep*, 18 Beav. 285; *Donaldson v. Donaldson*, Kay, 711; *Pearson v. Amicable Assurance Office*, 27 Beav. 229; *Woodford v. Charnley*, 28 Beav. 95; *Dilrow v. Bone*, 3 Gif. 538; *Airey v. Hall*, 3 Sm. & G. 315; *Parnell v. Hingston*, 3 Sm. & G. 337; *Milroy v. Lord*, 4 D. F. & J. 264.*

² *Kekewich v. Manning*, 1 D. M. & G. 176; *Grant v. Grant*, 34 Beav. 623; *Gilbert v. Overton*, 2 Hem. & M. 110; *Jones v. Lock*, L. R. 1 Ch. Ap. 25; *Richardson v. Richardson*, L. R. 3 Eq. 686; *Lambe v. Orton*, 1 Drew. & Sm. 125.

* See also *Otis v. Beckwith*, 49 Ill. 121; *Stone v. Hackett*, 12 Gray, 227; *Sherwood v. Andrews*, 2 Allen, 79.

A third person, particularly if a relation, may enforce in Equity a stipulation made by another in his favor, and for which the party who obtained it has given a valuable consideration plainly with a view of benefiting such third person, though such third person, as regards each of the contracting parties, may be a volunteer;¹ as where a person who has contributed a valuable consideration to a settlement, has exacted, as part of the contract, that certain property shall be so settled, as that the property, whether belonging to one of the parties or the other, shall go to some near relative, in the event of the intended limitation to the issue of the marriage failing to take effect.² But it would appear that, if the party exacting the stipulation releases the other, the stranger cannot enforce it, unless his condition in life has been altered by the stipulation.³ 422.

A grant or obligation which is voluntary as regards the grantee or obligee, ceases to be voluntary, where, with the privity of the grantor or obligor, it forms the consideration on the faith of which a marriage is contracted and a settlement executed.⁴ 423.

XIII. No specific performance, where it would be morally wrong or inequitable. XIII. Equity will not interfere, (1.) Where, in ordinary cases, the contract has become incapable of being substantially performed on the part of the person seeking relief,⁵ or has been violated by him.⁶ (2.) If the

¹ 2 Sp. 286.*

² 2 Sp. 281.

³ See 2 Sp. 280, 281.

⁴ *Payne v. Mortimer*, 1 Gif. 118.†

⁵ St. § 736.

⁶ *Telegraph, Despatch, etc., Co. v. McLean*, L. R. 8 Ch. Ap. 658.

* *Gale v. Gale*, L. R. Ch. D. 144.

† St. Eq. Jur. § 492 a.

plaintiff has been guilty of any negligence affecting the essence of the contract;¹ or if specific performance is sought by a purchaser, after he has permitted a long time to elapse, without evincing a fixed intention to carry his contract into execution, although he may have paid part of the purchase-money, or after he has made frivolous objections to the title, and trifled or shown a backwardness to perform his part of the agreement, especially if circumstances are altered.² (3.) If specific performance is sought by the vendor, and there is a substantial defect in the title of the whole or the principal part of the property, not remediable before the decree. (4.) If there is a substantial misrepresentation or misdescription of the estate or property, in a matter unknown to the purchaser, and in regard to which he was not put upon inquiry; or if it appears upon the evidence that there was, in the description of the property, a matter in which a person might *bona fide* make a mistake, and he swears positively that he did make a mistake, and his evidence is not disproved, the Court will not enforce the specific performance against him.³ Where the conditions of sale of a public-house state that it is in the occupation of a tenant, and a brewer agrees to buy it for the sale of his beer, he cannot be compelled to complete his pur-

¹ St. § 771; 2 Lead. Cas. Eq., 2d ed. 442, *et seq.*

² Sugd. Concise View, 181.

³ Leyland v. Illingworth, 2 D. F. & J. 248; Higgins v. Samels, 2 Johns. & H. 460; Swaisland v. Dearsley, 29 Beav. 430; Cox v. Coventon, 31 Beav. 378; Dimmock v. Hallett, L. R. 2 Ch. Ap. 21; St. § 778; Denny v. Hancock, L. R. 6 Ch. Ap. 1.

chase if he finds that it is under lease to another brewer for a term, of which some years are unexpired.¹ (5.) If the title is doubtful, in the opinion of the Court, although the Court itself may have a favorable opinion of the title; for the Court has no means of settling the question as against adverse claimants, or of indemnifying the purchaser, if its own opinion should turn out not to be well founded.² But if the Court is clearly of opinion that the title is good, it will not be deterred from enforcing specific performance, by the fact that one of the conveyancing council of the Court, or a judge of the Court below, considered the title doubtful.³ (6.) If the character and condition of the property have been so altered that the terms of the contract are no longer applicable to the existing state of things.⁴ (7.) If the defendant can show that, by fraud or mistake, the thing bought is different from what he intended; or if there was a great mistake as to the price.⁵ (8.) If the estate bought is of a different tenure;⁶ as if it was described as free-

¹ *Caballero v. Henty*, L. R. 9 Ch. Ap. 447.

² *Pyrke v. Waddingham*, 10 Hare, 7, 10; *Sykes v. Sheard*, 2 D. J. & S. 6; *Collier v. McBean*, L. R. 1 Ch. Ap. 81; *Mullings v. Trinder*, L. R. 10 Eq. 449.*

³ *Hamilton v. Buckmaster*, L. R. 3 Eq. 323; *Beioley v. Carter*, L. R. 4 Ch. Ap. 230; *Radford v. Willis*, L. R. 7 Ch. Ap. 7; *Bell v. Holtby*, L. R. 15 Eq. 178.

⁴ St. § 750.

⁵ *Webster v. Cecil*, 30 Beav. 62.†

⁶ 2 Lead. Cas. Eq., 2d ed. 453, *et seq.*

* St. Eq. Jur. § 779 a; *Richmond v. Gray*, 3 Allen, 25.

† *Park v. Johnson*, 4 Allen, 259.

hold when in fact it is copyhold;¹ or copyhold enfranchised under an Act of Parliament reserving to the lord his mineral rights;² or if it was described as freehold when leasehold,³ or as copyhold when freehold.⁴

(9.) If material terms have been omitted in the agreement, or there has been a variation of it by parol.⁵

(10.) If the contract is founded in imposition, surprise, misrepresentation, undue influence, or fraud of any kind; as where property was put up for sale to the highest bidder without mentioning any reserve, and the auctioneer and an agent for the vendor both bid against each other,⁶ or where a purchaser, who is better informed as to the value of the property than the vendor, hurries the vendor into an agreement, without giving him an opportunity of inquiry or advice.⁷ (11.) If, after the day fixed for performance is past, specific performance is sought by the purchaser, and the price is inadequate, or by the vendor, and the price is unreasonable.⁸ (12.) In the case of one entire agreement, the Court cannot decree specific performance or part of it, if it is unable to decree specific performance of the other part.⁹ But the principle that if the thing must be performed at all, it must be performed *in toto*, does

¹ *Ayles v. Cox*, 16 Beav. 23.

² *Upperton v. Nickolson*, L. R. 6 Ch. Ap. 436, 444.

³ *Sugd. Concise View*, 212.

⁴ *Ayles v. Cox*, 16 Beav. 23.

⁵ *St.* § 770.

⁶ *Mortimer v. Bell*, L. R. 1 Ch. Ap. 10; 30 and 31 Vict. c. 48.

⁷ *Walters v. Morgan*, 3 D. F. & J. 718.

⁸ *Sugd. Concise View*, 189.

⁹ *Stocker v. Wedderburn*, 3 K. & J. 393, 407; *Ogden v. Fossick*, 4 D. F. & J. 426.

not apply to an agreement which contemplated successive performances of different parts independently of one another.¹ And where an estate is agreed to be purchased, and certain other things taken at a valuation which are not at all an essential part of the purchase, and the vendor refuses to appoint a valuer, the Court will compel him to convey the estate without them.² (13.) The Court will not force any one to take a title, which it is evident will involve the taker in immediate litigation, unless he knew this when he bought the property.³ (14.) The Court will not enforce specific performance, if, on any other account, it would be morally wrong or inequitable to do so.⁴ 424.

And where there is a sufficient ground why specific performance should not be enforced against a purchaser, the Court will not enforce it, though something else

¹ *Wilkinson v. Clements*, L. R. 8 Ch. Ap. 96, 110.

² *Richardson v. Smith*, L. R. 5 Ch. Ap. 648.

³ *Pegler v. White*, 33 Beav. 403.

⁴ St. § 750, 750 a, 751 a, 769, 787; 2 Lead. Cas. Eq., 2d ed. 453, *et seq.*; *Directors of the Shrewsbury and Birmingham Rail. Co. v. Directors of the North-western Rail Co.*, 6 H. L. Cas. 113; *Falke v. Gray*, 4 Drew. 651; *Ormes v. Beadel*, 2 Gif. 166; *Tildesley v. Clarkson*, 30 Beav. 419; *Denne v. Light*, 8 D. M. & G. 774; *Reeves v. Greenwich Tanning Co.*, 2 Hem. & M. 54; *W— v. B—*, and *B— v. W—*, 32 Beav. 574; *Vivers v. Taite*, 1 Moo. P. C. (N. S.), 516; *Cochrane v. Willis*, 34 Beav. 359; L. R. 1 Ch. Ap. 58; *Baskcomb v. Beckwith*, L. R. 8 Eq. 100.*

* *Taylor v. Longworth*, 14 Peters, 173, 174; *Bank of Alexandria v. Lyon*, 1 Peters, 376, 382; *Cathcart v. Robinson*, 5 Peters, 264.

than that may be his actual motive for resisting specific performance.¹ 425.

The Court will not refuse to decree the specific performance of an agreement on the ground that one of the contracting parties has mistaken its clear legal effect.² 426.

Notwithstanding a party may have taken possession before the fulfilment of the promises of the opposite party to do necessary work, he may set up the non-fulfilment of such promises as a defence to a specific performance of the agreement to take the property.³ 427.

XIV. In like manner, Equity will not enforce assignments, contracts, or covenants which are against public policy. 428. And hence,

1. An officer in the army or navy, or other officer of the government, cannot assign his future accruing pay, or other remuneration connected with the right of the government to future services from him; because it is contrary to the honor, dignity, and interest of the State that its servants should be in danger of being reduced to poverty by anticipating those resources which were intended to place them in a suitable condition of respectability, comfort, and efficiency.⁴ But

XIV. Nor will Equity enforce assignments, contracts, or covenants, against public policy; as in the case of,

1. Assignments by officers of the government.

¹ Denny v. Hancock, L. R. 6 Ch. Ap. 1.

² Powell v. Smith, L. R. 14 Eq. 85.

³ Lamare v. Dixon, L. R. 6 H. L. 414.

⁴ See St. § 769, 1040 c-1040 f, and notes; 2 Sp. 867.*

* The assignment of claims against the United States in certain cases is prohibited by statute. See Wanless v. The United States, 6 Ct. of Claims, 123; Bates's Case, 4 Ct. of Claims, 569.

a man may assign a pension given him entirely for past services; and prize-money may be assigned.¹ And an assignment of a pension granted by the late East India Company is valid.² And it has been held that the pension payable to a former officer of the East India Company out of the revenues of India since the Transfer Act, 21 and 22 Vict. c. 106, may be assigned.³ 429.

2. And those involving champerty, maintenance, or buying of pretended titles.

2. On principles of public policy, Equity will not uphold assignments which involve champerty, or maintenance, or buying of pretended titles.⁴ Champerty (*campi partitio*) is properly a bargain between a plaintiff or defendant in a cause, and another person who has no interest in the subject in dispute (*campum partire*), to divide the land or other property sued for between them, if they prevail, in consideration of the other person carrying on the suit at his own expense. Maintenance, of which champerty is a species, is properly an officious intermeddling in a suit which in no way belongs to one, by maintaining or assisting either party with money or otherwise, to prosecute or defend it. Each of these is punishable, both at the Common Law and by statute, as tending to keep alive strife and contention, and to pervert the remedial process of the Law

¹ 2 Sp. 867.

² *Heald v. Hay*, 3 Gif. 467.

³ *Carew v. Cooper*, 4 Gif. 619.

⁴ St. § 1049; see *Reynell v. Sprye*, 1 D. M. & G. 660.*

* *Merritt v. Lambert*, 10 Paige, 352; *Lathrop v. Amherst Bank*, 9 Metc. 489.

into an engine of oppression. And the stat. 32 Hen. VIII, c. 9, prohibits the transfer of any right or title to hereditaments, unless the seller or his ancestors, or those by whom he claims have been in possession of the same, or of the remainder or reversion thereof, or of the rents and profits thereof, for one year next before the sale.¹ And Courts of Equity enforce all the principles of Law upon these points. Exceptions are made, however, to the general rule against champerty and maintenance, in the case of father and son, or of an heir apparent, or of the husband of an heiress, or of a master and servant, or the like.² 430.

3. Upon the same principle of not giving any encouragement to litigation, especially when undertaken as a speculation, Equity will not enforce the assignment of a mere naked right to litigate, that is, a right which, from its very nature, is incapable of conferring any benefit except through the medium of a suit; such as a mere naked right to set aside a conveyance for fraud.³ The right to complain of a fraud is not a marketable commodity; and if it appears that an agreement for purchase has been entered into for the purpose of acquiring such a right, the purchaser cannot call upon the

3. Nor assignments of mere naked right to litigate.

¹ St. § 1048, and note, and 1048 a; 2 Sp. 869; *Hilton v. Woods*, L. R. 4 Eq. 432.

² St. § 1049; 2 Sp. 870, 871.

³ St. § 1040 g, and note; 2 Sp. 868, 869, 872. See *Hill v. Boyle*, L. R. 4 Eq. 260.*

* *Milwaukee, etc., R. R. Co. v. Same*, 20 Wisc. 174.

Court for a specific performance of the agreement.¹ But a person may take an assignment of the whole interest of another in a contract, or security, or property which is in litigation, provided he does not make any advance beyond the mere support of the interest which he has so acquired. Thus, notwithstanding the statute 32 Hen. VIII, c. 9, above referred to, an equitable interest under a disputed contract for the purchase of real estate may be the subject of a sale. If such an interest is sold by the purchaser under such original contract, he becomes in Equity a trustee for his sub-purchaser, and must permit the sub-purchaser to use his name in legal proceedings for obtaining the benefit of the contract. And without entering into any covenants for the purpose, such sub-purchaser is obliged to indemnify the original purchaser from all the acts which he must do for the sub-purchaser's benefit. And so, a legatee may assign his legacy, and a creditor may assign his interest in a debt, although he may have commenced a suit to recover it.² In these cases there is an actual interest in the assignor, independently of litigation; and although it may require continued liti-

¹ De Hoghton v. Money, L. R. 2 Ch. Ap. 164.

² St. § 1050-4; 2 Sp. 863, 868-871; Myers v. United Guarantee Company, 7 D. M. & G. 112; Tyson v. Jackson, 30 Beav. 384.*

* But see St. Eq. Jur. § 1057 c. Danforth v. Streeter, 28 Vt. 490. "The *bonâ fide* purchaser of a bond or note not negotiable, or other *chose in action*, which is of the nature of a debt, which is represented to be due, and which the purchaser believes to be due, may sue upon the same, and not incur censure from the Law, and all contracts founded upon any such consideration are perfectly valid." Id.

gation to enforce it, yet the parties may possibly adjust the matter without further proceedings; whereas, in the case first mentioned, there is no interest in the assignor, or none but what may result from oversetting an interest in the other party. 431.

4. It is the rule of the Common Law that no possibility, right, title, or thing in action, can be granted to third persons, except in the case of the Sovereign, to whom and by whom an assignment could always be made; for it was thought that a different rule would be the means of multiplying contests and suits. And at Law, until the Judicature Act, 1873, this still continued to be the general rule, except in the case of negotiable instruments and some few other securities, or where a debtor assented to the transfer of a debt, so as to enable the assignee to maintain a direct action against him on the implied promise which resulted from such assent; and except in the case of possibilities coupled with an interest, and contingent interests in real estate, which might be granted and assigned at Law, in consequence of the stat. 8 and 9 Vict. c. 106;¹ and except in the case of assignees of policies of marine or life assurance, who might sue in their own names in consequence of the statute 30 and 31 Vict. c. 144, and 31 and 32 Vict. c. 86. And in the case of assignments of bond or other debts which are an exception to the above-mentioned rule, it was necessary to sue in the name of the original creditor; the person to whom it is trans-

4. Common Law rule against assignment of possibilities or things in action,

¹ St. § 1039; 2 Sp. 850, 851, 855.

ferred being regarded rather as an attorney than as an assignee.¹ 432.

Even before the late Statute of Wills, a devise of a possibility coupled with an interest, or of a contingent interest, whether in real or personal estate, was good at Law.² And a covenant to settle, charge, dispose of, or affect property to be hereafter acquired, will operate in Equity upon the property so afterwards acquired.³ And Courts of Equity gave effect to assignments for valuable consideration, of trusts and possibilities of trusts, and contingent interests, whether in real or personal estate, contingent gains, such as freight to be earned or a cargo to be procured, and even mere expectancies of heirs to their ancestor's estate, and *choses in action*. For such assignments of a *chose in action* are considered in Equity as amounting to an agreement to permit the assignee to make use of the name of the assignor at Law, in order to recover the debt, or to reduce the property into possession; or as a contract entitling the assignee to sue in Equity in his own name, and enforce payment of the debt directly against the debtor, whether he has assented or not, making him, as well as the assignor, if necessary, a party to the action.⁴ And such assignments of contingent interests, possibilities, and expectancies, are regarded in Equity as amounting to a contract to assign, when the interest becomes vested; and when the interest does so become

¹ St. § 1056.

² 2 Sp. 854.

³ 2 Sp. 254.

⁴ See St. § 1040, 1040 c, 1044, 1055, 1057; 2 Sp. 852, 865, 866, 896.

vested, the claim of the assignee is enforced, not indeed as a trust, but as a right under a contract.¹ 433.

By the Judicature Act, 1873 (36 and 37 Vict. c. 66), s. 25 (6), "Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal *chose in action*, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or *chose in action*, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or *chose in action* from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or *chose in action* shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or *chose in action*, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may if he think fit pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees." 434.

Assignment
of debts
and choses
in action.

¹ St. § 1040 b.

As a general rule, anything written, said, or done, in pursuance of an agreement and for valuable consideration, or in consideration of an antecedent debt, to place a *chose in action* or fund out of the control of the owner, and appropriate it in favor of another person, amounts to an equitable assignment.¹ So that an agreement between a debtor and a creditor, that the debt shall be paid out of a specific fund coming to the debtor, will operate as an equitable assignment. And an order given by a debtor to his creditor upon a person owing money to such debtor or holding funds belonging to him, directing such person to pay the creditor out of such money or funds, will amount to an irrevocable equitable assignment of such money or funds, or a sufficient part thereof, if made in consequence of a direct agreement.² And if such money or fund is handed over to the assignor by the person so ordered to pay, he will be made to pay it over again to the assignee.³ But where a railway company was in-

¹ 2 Sp. 855, 860, 861, 907; *Chowne v. Baylis*, 31 Beav. 351.*

² *Row v. Dawson*, 1 Ves. Sen. 331; *Ex parte South*, 3 Swans. 392; *Lett v. Morris*, 4 Sim. 607; *Burn v. Carvalho*, 4 My. & Cr. 690; *L'Estrange v. L'Estrange*, 13 Beav. 281; *Ex parte Steward*, 2 M. D. & G. 265; *Rodick v. Gandell*, 1 D. M. & G. 777; *Diplock v. Hammond*, 2 Sm. & Gif. 141; 2 W. R. 287; *Watson v. Duke of Wellington*, 1 Russ. & My. 602; *Malcolm v. Scott*, 3 Hare, 39; 2 Sp. 855, 860, 861, 907; *Coote Mortg.*, 8d ed. 234.†

³ *Jones v. Farrell*, 1 D. & J. 208.‡

* St. Eq. Jur. § 1047.

† See also *Mandeville v. Welch*, 5 Wheat. 277, 286; *Tiernan v. Jackson*, 5 Peters, 98; St. Eq. Jur. § 1044, *et seq.*

‡ *Brashear v. West*, 7 Peters, 608; *Judson v. Corcoran*, 17 How. Sup. Ct. 614.

debted to their engineer, who was greatly indebted to his banker, and the engineer authorized the solicitors of the company by letter to receive the money due to him from the company, and requested them to pay it to the banker, and the solicitors by letter promised the banker to pay him such money on receiving it; it was held that this did not amount to an equitable assignment of the debt.¹ And where a consignment of property is made by the owner, not in consequence of any obligation or contract express or implied, but of his own motion, with orders to pay over the proceeds to a third person, this is not an irrevocable appropriation at Law or in Equity, though the third person be a creditor; nor is a merely voluntary arrangement made by the debtor himself for payment of a creditor out of a particular fund, though communicated to the creditor, absolutely binding so that it cannot be revoked, that is, in the absence of special circumstances (as forbearance and the like on the part of the creditor), so as to raise a case of contract or of fraud.² 435.

When an assignment is made, everything must be done towards the obtaining of quasi possession that the subject admits of, in order to prevent payment to the assignor himself, and in order to acquire by assignment a complete title to a *chose in action*, as against trustees in bankruptcy or insolvency, or as against subsequent purchasers or incumbrancers, who might otherwise be deceived by apparent possession and ownership remaining in a per-

What must be done to obtain quasi possession under an assignment.

¹ Rodick v. Gandell, 1 D. M. & G. 763.

² 2 Sp. 862.

son who in fact is not the owner, or, in case of voluntary assignments, even as against the assignor himself. Hence notice of the assignment of a debt should be given to the debtor; and if a bond is assigned, it ought to be delivered over to the assignee.¹ Notice of the assignment of a policy of insurance must be given to the insurance office.² It is not necessary that the notice should be given in the lifetime of the assured; the principle is that it is sufficient if the notice is given to the party having the fund, while it remains in his possession.³ In all assignments of equitable interests other than equitable estates, he who gives formal notice to the holder of the fund has priority over him who does not. In general, notice to one of several obligors or trustees is sufficient.⁴ Where stock standing in the

¹ St. § 1047; 2 Sp. 855-7; *Ryall v. Rowles*, 2 Lead. Cas. Eq., 2d ed. 615, *et seq.*; and remarks of Turner, L. J., in *Ex parte Boulton*, 1 D. & J. 178, 179; *Holroyd v. Marshall*, 2 Giff. 382; 2 D. F. & J. 596; 10 H. L. Cas. 191; *Stansfeld v. Cubitt*, 2 D. & J. 222; *Warriner v. Rogers*, L. R. 16 Eq. 340.*

² *Coote Mortg.*, 3d ed. 231; *Thompson v. Tompkins*, 2 Dr. & Sm. 8.

³ *In re Russell's Policy Trusts*, L. R. 15 Eq. 26.

⁴ *Coote Mortg.*, 3d ed. 231; *Browne v. Savage*, 4 Drew. 635; *Willes v. Greenhill* (No. 1, 2), 29 Beav. 376, 387; 4 D. F. & J. 147; *Bridge v. Beadon*, L. R. 3 Eq. 664; *Lloyd v. Banks*, L. R. 4 Eq. 222; *In re Brown's Trusts*, L. R. 5 Eq. 88.†

* *Loomis v. Loomis*, 26 Vt. 552. But see also *Kennedy v. Parke*, 2 C. E. Green, 415. In cases of assignment of a debt where the assignor has collateral security therefor, the assignee will be entitled to the full benefit of such securities unless it is otherwise agreed between the parties. *Story Eq. Jur.* § 1047 a. So the guarantee of a previous assignor of a mortgage passes as incident. *Craig v. Parkes*, 40 N. Y. 181.

† 1 *Perry on Trusts*, § 438.

name of a trustee is assigned, and notice cannot be given to the trustee, he who first obtains a distringas on the stock will have a priority. Where a sum standing in the name of trustees is given by a testator as a specific legacy, the executors not having assented to the legacy, the incumbrancer under the specific legatee who first gives notice to the executors is entitled to priority.¹ In the case of an assignment of an interest in a fund in Court, the assignee should obtain a stop order,² unless the fund constitutes part of a testator's estate; in which case notice to the executor will be sufficient without a stop order.³ In the case of an assignment of costs of suit not yet ordered to be paid, notice should be given to the trustees to whom they would be payable.⁴ In the case of an assignment of freight, the assignee should give notice to the charterers of the assignment.⁵ In the case of shares in a company, notice must be given to the company.⁶ But verbal notice to the directors, in the course of the transaction of the business of the company, is sufficient.⁷ It was held that assignees in bankruptcy, who neglected to give notice, lost their priority equally with particular assignees.⁸ But it has

¹ 2 Sp. 857, 858; *Browne v. Savage*, 4 Drew. 635.

² *Bartlett v. Bartlett*, 1 D. & J. 127; *Stuart v. Cockerell*, L. R. 8 Eq. 607.

³ *Thompson v. Tompkins*, 2 Dr. & Sm. 8.

⁴ *Day v. Day*, 1 D. & J. 144.

⁵ *Brown v. Tanner*, L. R. 2 Eq. 806.

⁶ *Ex parte Boulton*, 1 D. & J. 163.

⁷ *Ex parte Agra Bank*, L. R. 3 Ch. Ap. 555.

⁸ *In re Barr's Trust*, 4 K. & J. 219; *Stuart v. Cockerell*, L. R. 8 Eq. 607; *In re Russell's Policy Trusts*, L. R. 15 Eq. 26.

since been held by Lord Cairns, L. C. (reversing the decision of Lord Romilly, M. R.), that where the trustee of a fund became acquainted (without notice) of the insolvency of his *cestui que trust*, and acted on the information, formal notice by a subsequent assignee did not give him priority over the assignee in insolvency.¹ In order to maintain his priority, it is sufficient if a prior assignee of the proceeds to arise from the sale of an officer's commission gives notice to the army agent of the regiment before the money has reached the agent's hands, though a subsequent assignee gave notice first.² 436.

When a debt not legally assignable has
Payments to
 assignee of
 a debt. been equitably assigned by the creditor to a purchaser for valuable consideration, and the debtor has had notice of the assignment, all payments which he may thereafter make to the purchaser on account of the debt, must be considered to be well made, so far at least as the debtor is concerned, notwithstanding that the purchaser may in fact, after notice of his purchase to the debtor, have sold or mortgaged the debt to some other person; provided that the payments were made by the debtor without notice of the latter sale or mortgage. Nor, in such a case, is it incumbent on him, before making a payment to the

¹ Lloyd v. Banks, L. R. 3 Ch. Ap. 488.

² Buller v. Plunkett, 1 Johns. & H. 441. On the subject of notice in the case of officers, see also Webster v. Webster, 31 Beav. 393; Somerset v. Cox, 33 Beav. 634; Addison v. Cox, L. R. 8 Ch. Ap. 76.

original purchaser, to require production or proof of the original assignment.¹ 437.

An equitable assignee of a legal term is not liable to be sued in Equity by the lessor for rent, or for damages in respect of breaches of covenants, even though he may have been in possession.² 438.

Suit against equitable assignee of a legal term.

As a general rule, an assignee of a *chose in action*, other than a bill of exchange or a note, takes it subject to the same equities as it was liable to in the hands of the assignor.³

Assignees taking subject to equities of assignor.

And a trustee in insolvency stands on the same footing as a particular assignee.⁴ But the person entitled to such equities may release them, either expressly or by implication arising from his course of conduct.⁵ 439.

5. The Courts of Equity will not enforce the specific performance of an agreement to refer any matter; deeming it against public policy to exclude any person from the appropriate judicial tribunals. Neither will Equity compel arbitrators to make an award. Nor when they have made

5. Interference in regard to arbitration.

¹ *Stocks v. Dobson*, 4 D. M. & G. 11, 17.

² *Cox v. Bishop*, 8 D. M. & G. 815.

³ 2 Sp. 863-5; *Mangles v. Dickson*, 3 H. L. Cas. 702; *Smith v. Parker*, 16 Beav. 119; *Rolt v. White*, 31 Beav. 520; *Rodger v. The Comptoir d'Escompte de Paris*, L. R. 2 P. C. 393; *Henderson v. The Comptoir d'Escompte de Paris*, L. R. 5 P. C. 253; *Chartered Bank of India, etc., v. Henderson*, L. R. 5 P. C. 501.*

⁴ *In re Atkinson*, 2 D. M. & G. 140.

⁵ *In re Northern Assam Tea Company*; *Ex parte Universal Life Assurance Company*, L. R. 10 Eq. 458.

* 2 *Perry on Trusts*, § 831; *Cook v. Tullis*, 18 Wall. 332.

an award, will Equity compel them to disclose the grounds of their judgment.¹ Nor will it interfere in the case of an agreement which was agreed to be wholly or partly determined by arbitrators who have not yet arbitrated.² 440.

Courts of Equity will enforce a specific performance of an award which is unexceptionable, and in which the parties have acquiesced.³ And where both parties have for a long time acquiesced in or acted upon an award, even though objections might have been originally urged against it, an application to set it aside will not be entertained.⁴ But where an arbitrator has been guilty of unfairness or partiality, relief will be given against his award.⁵ But there must be proof, and not merely suspicion, of this.⁶ 441.

On the question of setting aside an award, Courts of Law and Equity have acted on the same principles.⁷ Any kind of irregularities may be waived by the parties.⁸ 442.

Where there is an engagement between an architect and his employer that the total outlay shall not exceed a certain amount, and that engagement is concealed from the builder, it annuls a proviso for referring all

¹ St. § 1457; *Duke of Buccleuch v. Metropolitan Board of Works*, L. R. 5 H. L. 418.

² *Darbey v. Whitaker*, 4 Drew. 134.

³ St. § 1458, 1459; *Blackett v. Bates*, 2 Hem. & M. 610.

⁴ St. § 1459.

⁵ *Ormes v. Beadel*, 2 Gif. 166.

⁶ *Moseley v. Simpson*, L. R. 16 Eq. 226.

⁷ *Moseley v. Simpson*, L. R. 16 Eq. 226.

⁸ *Id.*

matters to the arbitration of the architect, so far as the builder is concerned.¹ 443.

XV. Courts of Equity will enforce a specific performance of a parol contract within the Statute of Frauds— 444.

XV. Parol contracts enforced.

1. Where it is fully set forth by the plaintiff, and it is admitted by the answer of the defendant, and the defendant does not insist on the statute as a bar. For, under these circumstances, there can be no fraud. And, although there may indeed be a temptation to the defendant to commit perjury, yet that is the case with every answer where the defendant's interest is concerned. And as the defendant does not insist on the Statute, he may be deemed to have waived it; and the rule is, *Quisque renuntiare potest juri pro se introducto*.² But if the defendant insists on the Statute as a bar, although he confesses the agreement, Courts of Equity will not enforce it; for that would be contrary to the express provisions of the Statute.³ 445.

1. When set forth by plaintiff, and admitted.

2. Equity will also enforce such a parol agreement where it was intended to be reduced to writing according to the Statute, but that has been prevented by the fraud of one of the parties.⁴ 446.

2. Where the reducing it to writing was prevented by fraud.

3. A parol agreement will also be enforced, whether it is an original agreement or a variation of or substitute for a prior written agreement, where it is a completed agreement, and it

3. Where partly performed.

¹ *Kimberley v. Dick*, 13 Eq. 1, 19.

² St. § 755-7, and notes.

³ St. § 757.

⁴ St. § 768.

has been partly carried into execution, and it is shown, by satisfactory evidence, to be clear, definite, and unequivocal in all its terms.¹ 447.

As to the acts which will be deemed a part performance, they should be such as are clearly and exclusively referable to a complete agreement, and must have been done with no other view than to perform such agreement;² and they must have put the party who has performed them in such a situation, that it would be a fraud, in the other party, after allowing him to do them, not fully to perform the agreement.³ For the ground on which Courts of Equity enforce specific performance in such cases is, that if the party allowing these acts to be done were not obliged to fulfil the agreement, it would be permitting him to commit a fraud, the very evil which the Statute was designed to prevent.⁴ Hence, a depositing, securing, or paying of the purchase-money will not be deemed such a part performance as will take the case out of the Statute; for the money can be

¹ St. § 759, 764, 770, note; *Lester v. Foxcroft*, 1 Lead. Cas. Eq., 2d ed. 625, *et seq.*; *Lady E. Thynne v. Earl of Glengall*, 2 H. L. Cas. 158; *Nunn v. Fabian*, L. R. 1 Ch. Ap. 35; *Coles v. Pilkington*, L. R. 19 Eq. 174; *Williams v. Evans*, L. R. 19 Eq. 547.*

² St. § 762; *Shillibeer v. Jarvis*, 8 D. M. & G. 79.

³ St. § 761; *Surcome v. Pinniger*, 3 D. M. & G. 571.

⁴ St. § 759.

* The rule is well settled that in Equity part performance takes a parol agreement out of the Statute of Frauds, on the ground that notwithstanding the Statute, it would be a fraud upon the party if the transaction were not completed. See cases cited in Am. note to *Lester v. Foxcroft*, above.

recovered back.¹ Nor will the delivery of an abstract of title, giving directions for conveyances, going to view the estate, fixing upon an appraiser to value stock, making valuations or admeasurements, registering conveyances, and acts of the like preliminary or ancillary and equivocal character, be considered as a part performance of the agreement, so as to take it out of the Statute.² But if upon a parol agreement the purchaser is admitted into possession, and such possession is exclusively referable to the contract, this amounts to a part performance which will take the case out of the Statute; because he is made a trespasser, and is liable to answer as such, if there is no valid agreement at Law or in Equity.³ And so, if a father, in consideration of the marriage of his daughter, makes an oral promise to give his daughter a house, and after the marriage he puts his daughter into possession, and she remains in possession till his death, the possession prevents the Statute of Frauds being set up as a bar to the proof of the parol contract; and it was held that any incumbrance on the house must be paid out of the settlor's estate.⁴ And so, if upon a parol agreement to grant a lease, the lessee is let into possession, and allowed to spend money on the faith of the agreement, the agreement will be enforced.⁵ But the execution of

¹ St. § 760.

² St. 762.

³ St. § 761, 763; *Pain v. Coombs*, 1 D. & J. 34.*

⁴ *Ungley v. Ungley*, L. R. 5 Ch. D. (Ap.) 887.

⁵ *Farrall v. Davenport*, 3 Gif. 363.

* See also *Eaton v. Whitaker*, 18 Conn. 222; *Malins v. Brown*, 4 Comst. 403.

an indenture of lease by a trustee has been held not to be a part performance of a parol agreement to lease, where the power to lease was only to arise on a request in writing by a married woman, which had not been made.¹ 448.

XVI. Parol variations or additions.

XVI. With respect to a parol variation or addition, it is to be observed that evidence of it was totally inadmissible at Law; and that the most unequivocal proofs of it will be required in Equity; and, in general, it will only be allowed to be used by a defendant in resisting a specific performance; not by a plaintiff in compelling such performance. The reason of this distinction is, that the Statute does not say that a written agreement shall bind, so as to prevent a defendant from insisting on a parol variation thereof, but only that a parol agreement shall not bind. Exceptions occur, however, to this doctrine of the inability of a plaintiff to make use of a parol variation. (1.) Where there has been such a part performance of the parol portion of the agreement as would enable the Court to decree a specific performance in the case of an original and independent agreement. (2.) Where an omission has occurred by fraud; and in cases not within the Statute of Frauds, where there has been a clear omission by mistake. (3.) Where the defendant sets up a parol variation or addition, and the plaintiff seeks a specific performance of the contract, with such variation or addition.² 449.

¹ Phillips v. Edwards, 33 Beav. 400.

² See St. § 770, note, and 770 a; Woolam v. Hearn, 2 Lead. Cas. Eq., 2d ed. 404; Laver v. Fielder, 32 Beav. 1.

XVII. It is the practice of Courts of Equity to enforce strict truth in the dealings of one man with another; so that if one man makes a deliberate promise to another, with a view to induce that other to do a particular act, which, relying on such promise, he accordingly does, the promissor shall be compelled to make good his word.¹ Thus, where a testator induces a person to render his valuable services on the faith of a verbal promise, that he would, in consideration of such services, leave such person certain property, and he makes a will leaving such property accordingly, and shows it to the donee, he cannot afterwards revoke the gift.² And when a marriage takes place on the faith of a promise to make a settlement, such promise will be enforced.³ And where a person intends to make certain provisions, gifts, or arrangements, for the benefit of others, but omits to do so, on the faith of a promise by another person to carry into effect what was so intended, such a promise will be specifically enforced in Equity; so that where an executor promised a testator that he would pay a legacy, and told the testator he need not put it in his will, the executor was decreed specifically to perform the promise.⁴ 450.

XVII. Promise enforced.

¹ M. R. in *Loxley v. Heath*, 17 Beav. 532; *Laver v. Fielder*, 32 Beav. 1, 12; *Tudor's Lead. Cas.* in Eq. 782; *Coverdale v. Eastwood*, L. R. 15 Eq. 121, 131.

² *Loffus v. Maw*, 3 Giff. 592.

³ *Alt v. Alt*, 4 Giff. 84; *Coverdale v. Eastwood*, L. R. 15 Eq. 121.

⁴ St. § 781.

XVIII.
Agreement
to borrow.

XVIII. Equity will not enforce the specific performance of an agreement to borrow or lend a sum of money.¹ 451.

XIX. Nega-
tive agree-
ments.

XIX. There are many cases where the agreement is merely negative, and the Court acts merely by injunction; as in the case of a covenant not to dig gravel. These may more properly be termed cases of decrees for specific adherence to agreements.² 452.

XX. Pay-
ment of
penalty.

XX. A person cannot evade performance of his contract by payment of the penalty for the breach of it.³(a) 453.

¹ Rogers v. Challis, 27 Beav. 175; Larios v. Bonany y Guerty, L. R. 5 P. C. 346.

² See St. § 721.

³ 2 Sp. 254; Peachy v. Duke of Somerset, 2 Lead. Cas., 2d ed. 895, *et seq.*; Long v. Bowring, 33 Beav. 585.*

(a) As to the general jurisdiction of the Courts of Equity in matters of specific performance, see Fry on Specific Performances, and Cuddee v. Rutter, 1 Lead. Cas. Eq., 2d ed. 709.

* St. Eq. Jur. § 7931.

TITLE III.

Of Adjustive Equity.

CHAPTER I.

OF ACCOUNT IN GENERAL.

IN matters of account standing on equitable claims, Courts of Equity have universal jurisdiction.¹ In matters of account growing out of privity of contract, and cognizable at Law, Courts of Equity have a general jurisdiction, where there are mutual and complicated accounts, and also where the accounts are on one side, but they are very complicated and intricate, or a remedy which is or was peculiar to a Court of Equity is required. But where the accounts, whether receipts or payments, or both, are all on one side, or where there is a single matter on the side of the plaintiff, and mere set-off on the other side, and where, in each case, no complication exists, and no peculiar equitable remedy is sought or required, Courts of Equity will decline taking jurisdiction.² The relation of principal and agent does not of itself

¹ St. § 454.

² See St. § 454, 459, 511, 512; *Phillips v. Phillips*, 9 Hare, 471; *Fluker v. Taylor*, 3 Drew. 183, 192; *Padwick v. Hurst*, 18 Beav. 575; *Smith v. Leveaux*, 2 D. J. & S. 1; *Shepard v. Brown*, 4 Gif. 208; *Southampton Dock Company v. Southampton Harbor and Pier Board*, L. R. 11 Eq. 254; *Kimberley v. Dick*, L. R. 13 Eq. 1.

entitle the principal to come into Equity for an account, if the matter can be fairly tried at Law.¹ 454.

Division of accounts. Accounts may be divided into open, stated, and settled accounts. 455.

Open accounts. An open account is an account of which the balance is not struck, or which is not accepted by both parties. 456.

Stated accounts. A stated account is one that is accepted by both parties. This acceptance need not be expressed, but may be implied from circumstances; as, if no objection is made to the account within a reasonable time. What is a reasonable time, is to be determined by the habit of business; and the usual course is required to be followed, unless there are special circumstances, constituting a ground for variation. Between merchants, acquiescence is presumed, under ordinary circumstances, after a lapse of several posts.² 457.

A stated account is ordinarily a bar to a suit for an account. It is ordinarily a good bar to a suit for an account that the parties have already stated the items and struck the balance; for under such circumstances there is an adequate

When it is not. remedy in a Court of Law. But if there is any mistake, omission, accident, or fraud, by which the account stated is vitiated, and the bal-

¹ *Barry v. Stevens*, 31 Beav. 258; *Smith v. Leverux*, 1 Hem. & M. 123; 2 D. J. & S. 1.*

* St. § 526.†

* St. Eq. Jur. 462 a.

† See also *Wiggins v. Burkham*, 10 Wall. 129.

ance is incorrectly fixed, a Court of Equity will interfere; in some cases, by directing the whole account to be opened and taken *de novo*; in others, by allowing it to stand, with liberty to the plaintiff to surcharge and falsify, or by simply opening the account to contestation as to one or two items which are specially set forth by the plaintiff in the suit.¹ The showing an omission for which credit ought to have been taken, is a surcharge; the proving an item to be wrongly inserted is a falsification. The *onus probandi* is always on the party having the liberty to surcharge and falsify; and the liberty extends to the examination, not only of errors of fact, but also of errors in law.² 458.

Different
modes of
relief.

Meaning of
"surcharge"
and
"falsify."

*Onus
probandi.*

Extent of
the liberty
to surcharge
and falsify.

Generally where an account has been settled, the rule is only to give liberty to surcharge and falsify the account, if errors of fact or of law are shown in the account; but where an account has been settled between a trustee and his *cestui que trust*, under circumstances of fraud or misrepresentation or undue influence used on the part of the trustee, there is scarcely any length of time that will prevent the Court from opening the account altogether.³ 459.

Opening
settled
accounts.

Acquiescence in an account, even for a considerable time, does not of itself establish the fact of the account having been settled.⁴ 460.

Acqui-
escence.

¹ St. § 523.

² St. § 525.

³ St. § 527; 2 Sp. 942.

⁴ St. § 528; see *Hunter v. Belcher*, 2 D. J. & S. 194, 202.

Lapse of
time.

Where, however, the demand would have been cognizable at Law, Courts of Equity are governed by the Statute of Limitations. But when the demand is purely equitable and the bar of the Statute is inoperative, they are sometimes regulated by the analogy of Law and sometimes by their own inherent principles, not to entertain stale demands, and not to encourage laches or negligence; from the difficulty of doing entire justice when the transactions have become obscure; and from the consciousness that the repose of titles and the security of property are manifestly promoted by fully acting upon the maxim, *Vigilantibus, non dormientibus, jura subveniunt*.¹ 461.

The Statute of Limitations (21 Jac. 1, c. 16), does not apply where a fiduciary relation exists between the parties, whether as express trustee and *cestui que trust*, or as principal and agent.² 462.

Lapse of time will not of itself bar an executor of an executor of his right to have an account of the original testator's estate taken, with a view to ascertain such executor's liabilities as an accounting party.³ 463.

The general law as to the appropriation of payments is this: the debtor is entitled to apply the payments at the time of making them, in such a manner as he thinks fit. In default

Appropriation of payments.

¹ St. § 529; *Knox v. Gye*, L. R. 5 H. L. 656; see *supra*, par. 33.

² *Obee v. Bishop*, 1 D. F. & J. 142; *Brittlebank v. Goodwin*, L. R. 5 Eq. 545; *Burdick v. Garrick*, L. R. 5 Ch. Ap. 233.*

³ *Smith v. O'Grady*, L. R. 3 P. C. 311.

* See also Angell on Limitations (6th ed), p. 161, *et seq.*, and American cases cited.

of appropriation by the debtor, the creditor is entitled to determine the application of the sums paid. And if neither does so by an express act, the law implies an appropriation of such payments to the items of debt in the order of their date.¹ 464.

An agent is not liable to account except to his principal; and the case of a charity forms no exception to the rule.² 465.

Agent liable to account only to his principal.

¹ *Merriman v. Ward*, 1 Johns. & H. 376. St. § 459 a-459 g; *Devaynes v. Noble*, Tudor's Lead. Cas. Merc. Law, 1.*

² *Att. Gen. v. Earl of Chesterfield*, 18 Beav. 596.

* See also *United States v. Kirkpatrick*, 9 Wheat. 720, 737-8; *Crompton v. Pratt*, 105 Mass. 255.

CHAPTER II.

OF ADMINISTRATION.

I. Jurisdiction. I. IN cases of any complication or difficulty, the Court of Chancery has, practically speaking, almost an exclusive jurisdiction in the administration of assets and the distribution of the residue, founded on the notion of a constructive trust, or on some auxiliary ground, such as the necessity for a discovery, formerly existing, or the consideration that the aid, if any, afforded at Common Law or in the Ecclesiastical Court, was not plain, adequate, and complete.¹ And by the stat. 20 and 21 Vict. c. 77, s. 23, the jurisdiction of the Ecclesiastical Court in the distribution of residues is abolished, and is not to be exercised by the Court of Probate. 466.

II. Proceeding by executor or administrator. II. The application for assistance is sometimes made by the executor or administrator himself, against the creditors generally, when he finds the affairs of his testator or intestate so much involved, that he cannot safely administer the estate except under the direction of a Court of Equity. Proceedings for administering the estate, instituted by executors or administrators, are not encouraged; be-

¹ St. § 534-543.

cause they may be used unduly to keep creditors out of their money.¹ 467.

III. But the aid of the Court is more usually sought by creditors.² And as a decree in Equity is held of equal dignity and importance with a judgment at Law, a decree on a proceeding of this sort, being for the benefit of all the creditors, makes them all creditors by decree, on an equality with creditors by judgment, so as to exclude, from the time of such decree, all preference in favor of the latter.³ As soon as the decree to account is made in proceedings on behalf of all the creditors, the executor or administrator is entitled to prevent legal proceedings against him by any of the creditors, except under the direction of the Court of Equity by which the decree was made.⁴ 468.

III. Proceeding of creditors.

IV. Assets (that is, property available for the payment of debts of a deceased person) are divided into legal and equitable. Legal assets are property which creditors may make available in a Court of Law for the payment of debts, as having devolved upon or been recoverable by the executor or administrator, as such, for that purpose, simply by virtue of his office, even though the property may be of an equitable nature, and he has consequently been obliged to resort to a Court of Equity to vest it in himself. Equitable assets are property which creditors can only make available in a Court of Equity for payment of debts, simply by virtue of an express

IV. Division of assets.

Definition of legal assets.

Definition of equitable assets.

¹ St. § 544, 545.

² St. 546.

³ St. § 547.

⁴ St. 549.

disposition of the property, which must be carried into effect by a Court of Equity. Hence it has been held that an equity of redemption of an equitable interest in a sum of money charged on land is legal assets. So that it is not the legal or equitable nature of the property, nor the remedy of the executor, but the remedy of the creditor, which determines whether the assets are legal or equitable.¹ 469.

Equitable assets include real property which the deceased had by will charged with or devised for payment of his debts, although liable for payment of them by Act of Parliament.² 470.

V. Courts of Equity follow the same rules in regard to legal assets which are adopted by Courts of Law, and give the same priority to the different classes of creditors which is enjoyed at Law. And Equity recognizes and enforces all antecedent liens, claims, and charges *in rem*, according to their priority, whether those charges are of a legal or an equitable nature, and whether the assets are legal or equitable.³ But equitable assets, with the exception above mentioned, are distributed *pari passu* among all the creditors without regard to the priority or dignity of the debts; and, after they are satisfied, among all the legatees or

V. Administration of legal assets.

Administration of equitable assets.

¹ See St. § 551, 552; 2 Sp. 314, 315; 2 Bl. Com. 244; Burt. Comp. § 734; Silk v. Prime, 2 Lead. Cas. Eq., 2d ed., *et seq.*; Cook v. Gregson, 3 Drew. 547; Shee v. French, Id. 716; Mutlow v. Mutlow, 4 D. & J. 539.*

² St. § 552 a.

³ St. § 553.

* 3 Wm.'s Ex'rs. 1683, *et seq.*, and cases cited.

distributees. But if the fund is insufficient to pay all the debts, all the creditors must abate in proportion. And so if the fund, after payment of debts, is insufficient to pay all the legacies, they must all abate in proportion, unless some priority is specifically given by the testator to some legacies over others.¹ But as between specific and pecuniary legatees, the loss is to fall wholly on the latter.² And charitable legacies now abate, as well as legacies of another kind.³ 471.

Abatement
of debts,
and lega-
cies.

By the Supreme Court of Judicature Act, 1875 (38 and 39 Vict. c. 77, s. 10), it is enacted (in lieu of the 1st sub-section of section 25 of the principal Act, 36 and 37 Vict. c. 66), that "in the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to

Adminis-
tration of
assets of in-
solvent
estates and
companies.

¹ St. § 554-6; 2 Sp. 314.

² 2 Sp. 343.

³ St. § 1180.

prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, and make such claims against the same as they may respectively be entitled to by virtue of this Act." 472.

Where one of several residuary legatees or next of kin has received his share of the estate of a testator or intestate, the others cannot call upon him to refund, because the assets have been wasted, unless they show that the wasting took place before the share was paid over.¹ 473.

Operation
of the
Statute of
Limitations
as regards
debts.

Debts actually barred by the Statute of Limitations are not included in a trust for payment of debts. But where a provision is made, either by will or by deed, for payment of debts out of real estate, the statutory time will cease to run, in the former case, from the death of the testator, in the latter from the date of the deed; because the creditor, the *cestui que trust*, is not to be barred by the neglect of the trustee to do his duty. The same principle will apply where personal estate only is assigned in trust for payment of debts. But where personalty is bequeathed for payment of debts, it does not prevent the running of the statute; because the trust for payment of debts, with which every executor is clothed, has no such effect. Indeed, such an express trust is inoperative for any purpose.² 474.

¹ Peterson v. Peterson, L. R. 3 Eq. 111.

² 2 Sp. 357; Moore v. Petchell, 22 Beav. 172.*

* St. Eq. Jur. 1521 b; 3 Wm.'s Exr's. 2028, *et seq.*

VI. Except so far as the property numbered below as five, six, and seven, may be affected by the recent decisions mentioned below, assets are now generally applied in the payment of debts in the following order:

VI. Order of administration of different properties in payment of debts and legacies.

First, the general personal estate is applied, except under the circumstances presently mentioned. Secondly, an estate particularly devised simply for the payment of debts. Thirdly, estates descended. Fourthly, property devised and bequeathed to particular devisees and legatees, but charged with the payment of debts.¹ In *Stead v. Hardaker*, L. R. 15 Eq. 178, the V.-C. Malins is reported to have said: "It appears to me that the rule that descended estates are liable to the payment of debts in priority to the specifically devised estates is a very unreasonable rule." But in the opinion of the writer the rule is founded in the reason of things. For the specific devisee is expressly an object of the testator's regard, whereas the heir only takes by act of Law. Fifthly, general legacies. Sixthly, lands comprised in a residuary devise. Seventhly, specific legacies and lands specifically devised.²

¹ St. § 577; 2 Sp. 817, 822-4; Coote Mortg., 3d ed. 472-4; 2 Jarm. Wills, 2d ed. 526-7, 535; *Phillips v. Parry*, 22 Beav. 279; *Wood v. Ordish*, 3 Sm. & G. 125; *Scott v. Cumberland*, L. R. 18 Eq. 578.*

² Coote Mortg., 3d ed. 474; *Dady v. Hartridge*, 1 Dr. & Sm. 236; *Barnwell v. Iremonger*, Id. 242; *Rotheram v. Rotheram*, 26 Beav. 465; *Bethell v. Green*, 34 Beav. 302; *Hensman v. Fryer*, L. R. 2 Eq. 627; *Brownson v. Lawrance*, L. R. 6 Eq. 1; *Powell v. Riley*, L. R. 12 Eq. 175.

* 4th Kent Comm. 420, 421; *Mitchell v. Mitchell*, 21 Md. 244.

In *Hensman v. Fryer*, L. R. 3 Ch. Ap. 420, Lord Chelmsford, C. (on appeal), held that a residuary devise remains specific in effect, notwithstanding the 24th section of the Wills Act, and that a general legatee and a residuary devisee must contribute *pro rata* in payment of debts, which the property first applicable is insufficient to satisfy. If this decision of Lord Chelmsford is right, the properties numbered above as five, six, and seven, would all be applied ratably. But in *Dugdale v. Dugdale*, L. R. 14 Eq. 234, and in *Tomkins v. Colthurst*, L. R. 1 Ch. D. 626, the V.-C. Malins refused to follow this decision (so far as regards legatees), as clearly erroneous; and held that real estate devised and not charged with debts, is not bound to contribute with a general legacy to meet the deficiency of the personal estate for payment of debts.¹ In *Eddels v. Johnson*, 1 Gif. 22; *Pearmain v. Twiss*, 2 Gif. 130; and *Clark v. Clark*, 4 Gif. 702, the V.-C. Stuart had previously held that lands specifically devised and lands comprised in a residuary devise are to be applied ratably in payment of debts. And the V.-C. Malins, in *Gibbins v. Eyden*, L. R. 7 Eq. 371, decided the same way. And in *Lancefield v. Iggulden*, L. R. 10 Ch. Ap. 136, reversing the decision of Bacon, V.-C., 17 Eq. 556, Lord Cairns, L.C., and James, L.J., decided that specific devisees must contribute ratably with residuary devisees, and regarded the decision of Lord Chelmsford as having settled the question.² Eighthly, personalty and realty, over which

¹ See also *Farquharson v. Floyer*, L. R. 3 Ch. D. 109.

² See also *Jackson v. Pease*, L. R. 19 Eq. 96.

the person whose estate is to be administered has exercised a general power of appointment.¹ 475.

A legacy or annuity given generally is payable out of a personal estate only. And even when a legacy or annuity is given out of real and personal estate, or where debts are payable out of real as well as out of personal estate, it is the general rule that the personal estate is first to be applied so far as it will extend. The personal estate constitutes the primary and natural fund for payment of debts and legacies, and will first be applied,² except in the following cases: 476.

Personal estate primarily applied, except,

1. When there are express words,³ or a plain intention of the testator to exonerate his personal estate.⁴ And to constitute such a plain intention, directions and expressions which do not necessarily imply more than that the real estate shall make good the deficiency, are not enough; there must appear upon the whole testamentary disposition, taken together, an intention so expressed as to convince a judicial mind that it was meant, not merely to charge the real estate, but so to

1. In the case of express words or plain intention to the contrary.

¹ 2 Jarm. Wills, 4th ed. 526, 528; Sugd. Pow., 8th ed. 474, 540; 2 Lead. Cas. Eq., 2d ed. 102-4; Trower Dr. & Cr. 295; Fleming v. Buchanan, 3 D. M. & G. 976.*

² 2 Sp. 334, 818; Tench v. Cheese, 6 D. M. & G. 453; Bright v. Larcher (No. 2), 4 D. & J. 608.

³ Young v. Young, 26 Beav. 522.

⁴ Coventry v. Coventry, 2 Dr. & Sm. 470.

* See also note 3 Wm.'s Exrs. (Perkin's Am. ed.), 1693, *et seq.*

charge it as to exempt the personal estate.¹ And (1.) If the real estate is directed to be sold for payment of debts, and the personal estate is expressly bequeathed to legatees, then the personal estate will be exonerated by necessary implication. But neither of these circumstances, apart from the other and from circumstances affording similar implication of intention, is a sufficient indication of an intention to exonerate the personal estate. For it is most probable that a direction to sell real estate for the payment of debts, where no disposition is made of the personal estate, was intended to be followed only in the event of the personal estate proving insufficient for the purpose of paying the debts. And, on the other hand, it is most probable that a bequest of personal estate, not by way of specific legacy, where no provision is made for payment of debts out of the real estate, was made subject to the

¹ 2 Sp. 336-341, 824; Coote Mortg., 3d ed. 454; 1 Rop. Leg. by White, 703, 710; 2 Jarm. Wills, 2d ed. 546-8; *Plenty v. West*, 16 Beav. 180; *Ion v. Ashton*, 28 Beav. 379.*

* See also St. Eq. Jur. § 566 b, c. In *Brant's Will*, 40 Miss. 266, where testator directed his debts to be paid generally without charging any particular fund, and then disposed by specific bequest and specific devise of his whole estate, it was held the realty and personalty must contribute ratably. Where the personal estate is all disposed of by will, and a legacy is made a charge on real estate devised, the personal estate is exonerated as to such legacy. *Larkin v. Mann*, 53 Barb. N. Y. 267.

But the intent to charge the realty must be shown by mingling real and personal estate in a residuary clause or in some other way, and the intent must be clear. *Gerken's Estate*, 1 Tucker (N. Y. Surr.), 49; *Okeson's Appeal*, 59 Penn. St. 99.

payment of debts out of such personal property.¹ (2.)

Where the testator gives his personal estate as a whole, and not as a residue, by way of specific legacy to one who is not executor, and another fund is supplied for payment of debts, legacies, and funeral and testamentary expenses, the personal estate is exonerated.² (3.)

Where a testator directs the conversion of his real and personal estate, and creates a mixed fund out of the produce, and appropriates that fund for the payment of debts, etc., the two estates comprised in that fund are applicable *pro rata*. But in such case, if there is no conversion out and out, the surplus (if any) will result as real and personal estate. If a portion only of the personal estate is comprised in the fund, the residue will be chargeable only when that fund fails.³

(4.) So where a devise is made, subject to a condition of paying off the incumbrances affecting the estate; or where only the residue of the proceeds of real estate, after payment of debts, is devised.⁴ And where real estate is devised to a person, upon condition of his paying debts and legacies generally, or charged with

¹ 2 Sp. 340, 341, 818, 823; 2 Wms. on Executors, 6th ed. 1576, 1577.

² 2 Sp. 341; 2 Jarm. Wills, 2d ed. 562; *Gilbertson v. Gilbertson*, 34 Beav. 354; *Powell v. Riley*, L. R. 12 Eq. 175.*

³ *Coote Mortg.*, 3d ed. 470; 2 Sp. 818; 2 Jarm. Wills, 2d ed. 529, 531; *Simmons v. Rose*, 21 Beav. 37; 6 D. M. & G. 411; *Turner L. J.*, in *Tench v. Cheese*, 6 D. M. & G. 467; *Bright v. Larcher*, 3 D. & J. 148; *Allan v. Gott*, L. R. 7 Ch. Ap. 430.†

⁴ 2 Sp. 334, 342.

* *Larkin v. Mann*, 51 Barb. 267.

† 3 *Williams, Executors*, 1712, *et seq.*

them generally, or is given to trustees for those purposes, and the personal estate is disposed of by a general residuary bequest, these circumstances will not prevent the personal fund being applied in the first instance in the satisfaction of those demands.¹ And if a testator expressly charges his personal estate with debts of a particular description, namely, with those by simple contract, and then bequeaths that fund, it will not be discharged from debts, etc., generally.² And, as a general rule, no extrinsic evidence can be admitted to ascertain the intention to exonerate; so that the circumstances of the testator, and the amount of his personal estate and of debts, cannot be taken into consideration.³ 477.

If the personal estate is exonerated from debts and legacies in favor of A, and he dies before the testator, by which event the disposition lapses, the executors or next of kin of the testator who accidentally become entitled to the fund will take it with its primary and natural obligation to discharge the debts and legacies.⁴ 478.

2. Where
the debt or
charge is
real.

2. When the charge or incumbrance is, in its own nature, real; as in the case of a jointure; or of pecuniary portions to be raised out of lands by the execution of a power; or of pecuniary portions to be raised in favor of daughters under a marriage settlement, out of lands vested in trustees for the purpose; or of a devise of lands to a person charged

¹ 1 Rep. Leg. by White, 695.

² Ib., 706.

³ 2 Sp. 337; 1 Rep. Leg. by White, 724.

⁴ Ib., 744.

with, or with a direction to pay, particular sums of money, or to trustees in trust to raise and pay particular sums, as distinguished from a charge or trust for satisfaction of debts or legacies generally.¹ And although there may be also a personal covenant to raise the jointure, portions, or sums, such covenant will only be regarded as an additional security, not as the primary one. If there is no such personal covenant for the payment of portions, but a covenant to settle lands, and to raise a term of years out of the lands for securing the portions, there, even though there be a bond to perform the covenant, the portions are not in any event payable out of the personal estate. A mortgage debt (except in such cases as are mentioned in the next two paragraphs), whether the lands in mortgage devolve upon the heir-at-law or a general devisee or a particular devisee, is not considered as in its own nature real, but is primarily payable out of the general personal estate of the testator, where it is not made payable by a devisee. Where the mortgaged estate is devised *cum onere*, it is payable by the devisee. But the expression "subject to the mortgage," in the devise of a mortgaged estate, may sometimes be only descriptive of the estate, and not expressive of an intent that the devise is made *cum onere*.² 479.

¹ 1 Rop. Leg. by White, 671; 2 Jarm. Wills, 2d ed. 543, 567-9.

² 2 Sp. 819; 1 Rop. Leg. by White, 731, 732; 11 Jarm. & Byth. by Sweet, 797, n. (a); Coote Mortg., 3d ed. 350, 452; 2 Jarm. Wills, 2d ed. 534. On this subject see *Jenkinson v. Harcourt, Kay*, 688; *Bond v. England*, 2 K. & J. 44; *Townshend v. Mostyn*, 26 Beav. 72; *Lady Langdale v. Briggs*, 8 D. M. & G. 391.

3. Where the debt was not contracted by the person who died last seized or entitled.

3. Where the debt was not contracted by the person who died last seized or entitled, but by some other person from whom he took it by descent or devise, or by some other person from whom he purchased it, or from whom his vendor derived it. Thus, where a mortgage was created by an ancestor, and the mortgaged estate descended upon the heir, there, although the heir entered into a collateral contract or covenant, or gave security for payment of the mortgage, yet his personal estate would not be liable to be charged, in favor of any person who should derive title by descent under him to the mortgaged premises, subject to the mortgage. But it is different if the heir or devisee or purchaser did anything which raised a new and independent contract between him and the mortgagee (unless it was simply for the purpose of paying off the debts or legacies of the original mortgagor, as such), or had in any other way made the debt his own.¹ 480.

4. In certain cases where a person dies entitled to land in mortgage after Dec. 31, 1854.

By the stat. 17 and 18 Vict. c. 113, it is enacted that, "when any person shall, after the 31st day of December, 1854, die seized of or entitled to any estate or interest in any land or other hereditaments which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and

¹ St. § 571-6, 1003; 2 Sp. 334-6, 393, 394, 819, 824; Coote Mortg., 3d ed. 453, 478, 479, 481; 1 Rep. Leg. by White, 735, 739, 742; 2 Jarm. Wills, 2d ed. 536, 539; Swainson v. Swainson, 6 D. M. & G. 648; Townshend v. Mostyn, 26 Beav. 72; Ion v. Ashton, 28 Beav. 379; Bagot v. Bagot, 34 Beav. 134.

such person shall not, by his will or deed, or other document, have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised, shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage debts charged on the whole thereof: Provided always, that nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt either out of the personal estate of the person so dying as aforesaid or otherwise: Provided also, that nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed, or document already made or to be made before the 1st January, 1855." 481.

An equitable mortgage by deposit and memorandum is within this Act.¹ And it extends to copyholds.² 482.

Leaseholds were held to be not within this Act.³ 483.

Various other points connected with the construc-

¹ *Pembroke v. Friend*, 1 Johns. & H. 132.

² *Piper v. Piper*, 1 Johns. & H. 91.

³ *In re Wormsley's Estate*, L. R. 4 Ch. D: 665.

tion of this Act have been decided, but they do not come properly within the scope of a work like the present. 484.

By the stat. 30 and 31 Vict. c. 69, it is enacted that, "in the construction of the will of any person who may die after the 31st day of December, 1867, a general direction that the debts or that all the debts of the testator shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule established by the said Act, unless such contrary or other intention shall be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate" (s. 1); and "in the construction of the said Act and of this Act, the word 'mortgage' shall be deemed to extend to any lien for unpaid purchase-money upon any lands or hereditaments purchased by a testator" (s. 2). 485.

By the stat. 40 and 41 Vict. c. 34, it is enacted that the stat. 17 and 18 Vict. c. 113, and 30 and 31 Vict. c. 69 (*supra*, par. 481, 485), "shall, as to any testator or intestate dying after the thirty-first December, one thousand eight hundred and seventy-seven, be held to extend to a testator or intestate dying seized or possessed of or entitled to any land or other hereditaments of whatever tenure which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, or any other equitable charge, including any lien for unpaid purchase-money; and the devisee or legatee or heir shall not be entitled

to have such sum or sums discharged or satisfied out of any other estate of the testator or intestate unless (in the case of a testator) he shall within the meaning of the said Acts have signified a contrary intention; and such contrary intention shall not be deemed to be signified by a charge of or direction for payment of debts upon or out of residuary real and personal estate or residuary real estate." 486.

Where assets of a testator, consisting of personalty which could be identified, are settled *bond fide* upon marriage, they cease to be liable to subsequently accruing claims in respect of breaches of covenant entered into by the testator, but of which the parties to the settlement had no notice when they executed it.¹ 487.

Non-liability of personalty settled on marriage.

Property specifically bequeathed is not discharged from its liability to the testator's creditors by the circumstance that there has come to the hands of the executors personal property of the testator not specifically bequeathed more than sufficient to pay his debts and funeral and testamentary expenses, and that the specifically bequeathed property has been made over by the executor to the specific legatee; whatever may be the rights of the specific legatee as regards the executor or residuary legatee.² 488.

Liability of property specifically bequeathed.

VII. In the order of satisfaction, if the personal estate of the deceased is not sufficient for all purposes, creditors are preferred

VII. Order of satisfaction.

¹ *Dilkes v. Broadmead*, 2 D. F. & J. 566.

² *Davies v. Nicolson*, 2 D. & J. 693.

to legatees ; because it is to be presumed that a testator means to be just, by desiring his debts to be paid, before he is generous ; and the personal estate, as we have seen, is the natural fund for the payment of debts. Again, specific legatees are preferred to the heir, because the heir, instead of being expressly an object of the testator's regard, like the specific legatee, only takes by act of Law. Specific legatees are also preferred to the devisee of real estate charged with specialties or with the payment of debts, and to residuary devisees of real estate. But general pecuniary legatees are not preferred to residuary devisees of real estate. Nor are specific devisees of lands, not charged with specialties or with the payment of debts, preferred to specific legatees ; but upon failure of the general personal estate, the specific devisees and specific legatees shall each, according to the proportionate value of the benefits conferred on each, contribute to the payment of debts. Where a particular portion of the personal estate is bequeathed, subject to the payment of debts and legacies, there, as between the legatees, the residuary personal estate is exonerated, if there is no gift of the residue.¹ As between a devisee of a mortgaged fee simple estate and a specific legatee of personalty, the devisee shall not have his mortgage paid by the specific legatee, but shall take the mortgaged estate *cum onere*. *A fortiori*, a specific legatee of a mortgaged leasehold shall not have the mortgage wholly or partly paid off by specific legatees of other

¹ St. § 571 ; 2 Sp. 343.

leaseholds.¹ Subject to the stat. 17 and 18 Vict. c. 113 (*supra*, par. 481), the devisee of mortgaged premises is preferred to the heir-at-law of descended estates; because the devisee is evidently an object of the testator's bounty; and *a fortiori*, the devisee of premises not mortgaged is preferred to the heir-at-law; and if unincumbered lands and mortgaged lands are both specifically devised, but expressly after payment of all the debts, they are to contribute proportionably in discharge of the mortgage. Where the equities of the legatees and devisees are equal, the Court remains neuter, and suffers the Law to prevail.² 489.

But subject to the stat. 17 and 18 Vict. c. 113 (*supra*, par. 481), where the personal assets are sufficient to pay all the debts and legacies and other charges, there the heir-at-law or devisee, who has been compelled to pay any debt or incumbrance of his ancestor or testator binding on him, is entitled (unless there is some other equity which repels the claim) to have the debt paid out of the personal assets in preference to the residuary legatees or distributees,³ because such charges are primarily payable out of personal estate. 490.

And, subject to the same statute, lands devised for or subject to the payment of debts are also liable to discharge a mortgage, in favor of the heir or devisee to whom the mortgaged lands may belong, unless the mortgaged lands are really devised *cum onere*.⁴ 491.

¹ 2 Sp. 838. ² See St. § 571; 2 Sp. 832, 839, 882. ³ St. § 571.

⁴ St. § 571; 2 Sp. 822, and see *supra*, par. 479.

Where money is payable under a voluntary bond, the assignee for value of an equitable interest in it is entitled to rank as a specialty creditor against the assets of the obligor, though the obligee would not be so entitled.¹ 492.

VIII. Mar-
shalling of
assets.

VIII. There are many cases in which parties, whose right at Law is confined to one fund, would fail to obtain the satisfaction of their just claims, if left to the course of Law, but are enabled to obtain full satisfaction thereof by means of a particular adjustment effected by Courts of Equity, termed the marshalling of assets. This may be defined to be such an arrangement of the different funds of the common debtor of two or more creditors as may satisfy every claim, so far as, without injustice, such assets can be applied in satisfaction thereof, notwithstanding the claims of particular individuals to prior satisfaction out of some one or more of those funds. So that if there are two or more different kinds of funds of the common debtor of several creditors, and at Law one can have recourse to either of those funds, while another is confined to one of them, the former shall either be compelled to seek satisfaction out of that fund to which the latter cannot resort, so far as it will extend, or the latter shall receive compensation out of that fund, in proportion to the amount which the former has unnecessarily taken from that

¹ Payne v. Mortimer, 4 D. & J. 447.

which formed the only source of payment for the latter.¹ 493.

This plan is adopted as against mortgagees and other creditors of the superior kind, in favor not only of mortgagees and creditors of the superior kind, but also of creditors of an inferior rank, or of legatees (except residuary legatees, where the residue is not exonerated, and legatees whose legacies are given out of a residue), or of portionists, or of the heir-at-law, or of a devisee; and as against simple contract creditors, in favor of legatees;² and as against a person who becomes a surety for a mortgagor on the occasion of a first mortgage, in favor of a second mortgagee.³ Thus, legatees, with the above exceptions, are permitted to stand in the place of specialty creditors, against the real assets descended, or of a mortgagee who has exhausted the personal estate, whether the mortgaged lands have descended to the heir-at-law, or have been devised to a devisee who is to take subject to the mortgage. And where a testator bequeaths legacies, and devises real

Marshalling
in favor of
creditors, or
of legatees,
or of a por-
tionist, or of
the heir, or
of a devisee.

Legatees put
in the place
of mort-
gagees and
specialty
and simple
contract
creditors;

¹ See St. § 558-563; 2 Sp. 827, 828; *Aldrich v. Cooper*, 2 Lead. Cas. Eq., 2d ed. 56, *et seq.*; *Gibson v. Seagrim*, 20 Beav. 14.*

² See St. § 562-6, 570; 2 Sp. 410, 819, 820, 827, 829, 833.

³ *South v. Bloxham*, 2 Hem. & M. 457.

* 3 Wm.'s Exrs. (Perkins Am. ed.), 1713, *et seq.*; *Alston v. Munford*, 1 Brock. 266; *Torr's Estate*, 2 Rawle, 250, 252. The aim of a Court of Equity as it regards the payment of debts is equality; that the assets shall be so distributed as to satisfy all the creditors. *Ibid.*

estate in trust for, or subject to, payment of debts, and the personal estate is exhausted by creditors, the legatees are entitled to come upon the real estate.¹ And in consequence of the stat. 3 and 4 Wm. IV, c. 104, which makes real estate liable to simple contract debts, though it was subject to a priority in favor of specialty debts, legatees are permitted to stand, in regard to land descended, in the place of simple contract creditors who have exhausted the personal estate, so as to prevent a satisfaction of the legacies.² But residuary legatees, where the residue is not exonerated, and legatees whose legacies are given out of a residue, have no such equity; for a residue of personal estate implies what remains after satisfying the charges upon it.³ And the equity of legatees will not generally prevail against a devisee of the real estate not mortgaged, whether he is a specific or a residuary devisee; for between persons equally taking by the bounty of the testator, Equity will not interfere, unless the testator has clearly indicated some ground of preference or priority of the one to or over the other.⁴(a.) 494.

but not of
devisee of
real estate
not mort-
gaged.

Marshalling
as between
freehold
and copy-
hold.

Where one party has a charge on freehold and copyhold estate, and another party a charge on the freehold only, the latter is entitled to require that the former should be

¹ *Surtees v. Parkin*, 19 Beav. 406; *Paterson v. Scott*, 1 D. M. & G. 531.*

² St. § 566; 2 Sp. 830.

³ 2 Sp. 820.

⁴ St. § 565; 2 Sp. 820, 829, 830-2.

(a) But see *supra*, par. 475.

* See also cases cited in note 3, Wm.'s Exrs., 1718.

satisfied out of the copyhold estate, so far as it will extend.¹ 495.

The same marshalling of assets takes place as between legacies charged on land and legacies not so charged.² But since the statute 9 Geo. II, c. 36, legacies or bequests to charitable uses, payable out of real estate or charged on real estate, or to arise from the sale of real estate, are, with some exceptions, utterly void;³ and Equity has in some modern cases refused to marshal the assets in favor of charitable bequests, when given, either directly or by way of trust, out of a mixed fund of real and personal estate, or of personalty connected with realty and pure personalty. Instead of directing the debts and the other legacies to be paid out of the real estate or impure personalty, and reserving the pure personalty to fulfil the charitable bequests, the charity legacies have been considered as intended to be charged on the pure personal estate and the proceeds of real estate, or the impure personalty proportionately, like other legacies, as if no legal objection existed to applying the proceeds of the real estate to the charitable bequests; and as charity legacies cannot legally be charged on the proceeds of real estate or the impure personalty, they have been held to fail as to that proportion which would have come to them out of the

Marshalling
as between
legacies
charged on
land and
others not
so charged.

Adminis-
tration in
the case of
charitable
legacies.

¹ Tidd v. Lister, 10 Hare, 157; 3 D. M. & G. 857.

² St. § 566.

³ St. § 569; and see Smith's Compendium of the Law of Property, 5th ed., par. 1402-5.

proceeds of the real estate or the impure personality.¹ In this instance not only has the principle of favor to charities been discarded, but the Courts have (very improperly, as the writer humbly submits) acted upon a diametrically opposite principle. A testator has the power of directing the charity legacies to be paid out of the pure personality, and the debts and private legacies out of the mixed personality or realty.² And where a testator expressly directs charity legacies to be paid exclusively out of his pure personality, and the personality savoring of realty is sufficient for the payment of legacies to individuals, and though the will does not throw the legacies to individuals upon the personality savoring of realty, yet it does not purport to make those legacies payable at all out of the pure personality, but gives them without reference to any particular fund, and the pure personality is not sufficient or only sufficient for the payment of the charity legacies; the legacies to individuals ought to be paid out of the personality savoring of realty, so as to leave the pure personality for the payment of the charity legacies.³ But even in the absence of such an express

¹ See St. § 569, 1180; 2 Sp. 233, 235; *Miles v. Harrison*, L. R. 9 Ch. Ap. 316.

² See Lord Langdale's judgment in the *Philanthropic Society v. Kemp*, 4 Beav. 581; *Robinson v. Geldard*, 3 Mac. & G. 735; and see remarks of V.-C. Stuart in *Jauncey v. Att.-Gen.*, 3 Gif. 319, 320; *Wills v. Bourne*, L. R. 16 Eq. 487; *Miles v. Harrison*, L. R. 9 Ch. Ap. 316.*

³ *Robinson v. Geldard*, 3 Mac. & G. 735, 747; *Beaumont v. Oliveira*, L. R. 6 Eq. 534; 4 Ch. Ap. 309; *Miles v. Harrison*, L. R. 9 Ch. Ap. 316.

* 3 Wm's Ex'rs, 1720, and cases cited.

adjustment the writer conceives that the Courts ought, in favor of charities, to have imputed to testators an intention that the charity legacies should be paid out of that fund alone out of which they lawfully might be paid. 496.

Where a testator directs charitable legacies to be paid out of pure personalty in precedence of other legacies, but is silent as to the fund for payment of debts, there, though the pure personalty be insufficient to pay all the charity legacies, yet it has been held (improperly, as the writer submits) that the debts and funeral and testamentary expenses and the costs are payable, in the first instance, out of the pure personalty and the mixed personalty ratably, according to their relative values.¹ 497.

Marshalling of assets takes place as between simple contract creditors and a vendor of real estate, in respect of his lien for his unpaid purchase-money.² And as against an heir, taking an estate purchased, legatees are entitled to have the assets marshalled, so as to give them the benefit of the vendor's lien.³ And it has been held by Sir J. Romilly, M.R., that this doctrine applies as against a devisee taking the purchased estate.⁴ But the doctrine contained in this paragraph must be considered to be subject to the operation of the stat. 17

Marshalling
as between
simple con-
tract debts
and a ven-
dor's lien.

¹ *Tempest v. Tempest*, 7 D. M. & G. 470.

² St. § 564 a.

³ 2 Sp. 833.

⁴ *Birds v. Askey* (No. 2), 24 Beav. 618; *Lord Lilford v. Powys Keck*, L. R. 1 Eq. 347; but see 2 Sp. 833; *Wythe v. Henniker*, 2 My. & K. 635.

and 18 Vict. c. 113, as explained and extended by the stat. 30 and 31 Vict. c. 69, and 40 and 41 Vict. c. 34.¹ 498.

Redemption or exoneration of a specific legacy. On analogous grounds, if a specific legacy has been pledged or incumbered with mortgages or other charges by the testator, the specific legatee is entitled to have his legacy redeemed or exonerated; and if the executor fails to perform that duty, the specific legatee is entitled to compensation out of the general assets. Indeed the same principles apply to specific legatees as to devisees, in respect to the redemption of the subject-matter out of the general assets.² 499.

Protection of a widow's paraphernalia. Again, in order to preserve a widow's paraphernalia, which, with the exception of necessary apparel, is subject to debts, Equity will oblige creditors who are entitled to proceed against real assets or funds, to resort to such assets or funds, or will decree her compensation out of the same.³ 500.

IX. Assets collected in a foreign country by a domestic executor or administrator. IX. With regard to the assets of foreigners, it is to be observed, that in general where a domestic executor or administrator collects assets in a foreign country, without any letters of administration taken out or any actual administration accounted for in such foreign country, and brings them home, they will be treated as personal assets to be administered here under the domestic administration.⁴ 501.

¹ See *supra*, par. 481-6.

² St. § 566 a; 2 Sp. 774.

³ St. § 568; 2 Sp. 821, 829.

⁴ St. § 583.

If property is received by a foreign executor or administrator abroad, and afterwards remitted here, an executor or administrator appointed here could not assert a claim to it here, either against a person in whose hands it happened to be, or against the foreign executor or administrator. The only mode of reaching it, if necessary for the purpose of due administration here, would be to require it to be transferred or distributed after the claims against the foreign executor or administrator had been ascertained and settled abroad.¹ 502.

Assets received by a foreign executor or administrator, and remitted here.

In cases of intestacy, the law of the domicile of the deceased determines the fund out of which debts shall be paid; and in cases of testacy, the intention of the testator.² 503.

The priorities of creditors are regulated by the domicile of the testator, although the personal assets may be situate and administered in another country.³ 504.

¹ St. § 584.

² St. § 587.

³ *Wilson v. Lady Dunsany*, 18 Beav. 293.*

* Where the intestate was at the time of his decease permanently domiciled in a foreign country, his personal estate, after the payment of debts, will be distributed according to the law of the domicile at the time of his decease. *Story, Conf. Laws*, § 481-482a, 491a, 514; *Parsons v. Lyman*, 20 N. Y. 103. The fact whether a deceased person died intestate or not must be determined by the law of the place where he was domiciled at the time of his death. *Moultrie v. Hunt*, 23 N. Y. 394. See *Redf. Wills*, § 77.

CHAPTER III.

OF MORTGAGES, PLEDGES, AND LIENS.

SECTION I.

OF LEGAL MORTGAGES OF REAL PROPERTY.

I. GENERALLY every description of property and every kind of interest in it, which is capable of absolute sale, may be the subject of a legal mortgage or its equivalent in Equity.¹ 505.

I. What
may be
mortgaged.

II. What
amounts to
a mortgage,
and what to
a purchase
with right
of repur-
chase.

II. It may be considered as an almost universal rule, that wherever a conveyance or assignment of an estate is originally intended as a security for money, whether this intention appears on the deed itself, or by any other instrument, or even by parol evidence, and whether directly or indirectly, it will ever after be considered in Equity as a mortgage, and therefore

¹ 2 Sp. 614.*

* Jones on Mortgages, § 136. And a mortgage by a railroad company specifically covering after-acquired property is binding in Equity upon real estate and personal property afterwards purchased for the use of the road. This is the settled law of the Federal Courts and generally of the State Courts. Id. § 152, and cases there cited.

redeemable on the usual terms, though at the time of the loan or as part of the same transaction, there may be an express agreement between the parties that it shall not be redeemable, or that the right of redemption shall be confined to a particular time or to a particular person or description of persons; for such an agreement will be void.¹ But there may be an absolute *bond fide* sale and conveyance, with a collateral agreement for repurchase and reconveyance on repayment of the purchase-money, and such collateral agreement may either be introduced into the agreement for sale at the time, or may be made at a subsequent period.² 506.

If the money paid by the grantee would be a grossly inadequate price for the absolute purchase of the estate; if he was not let into immediate possession of the estate; if he accounted for the rents to the grantor, and only retained an amount equivalent to interest; or if the expense of preparing the deed of conveyance was borne by the grantor; each of these circumstances has been considered as evidence, showing, with more or less cogency, that the conveyance was intended merely by way of security.³ 507.

A conveyance will not be deemed a mortgage or held to be a security only, though it be for an under-value, if it is not so gross as to show that necessity or

¹ St. § 1018; 2 Sp. 618-623.*

² 2 Sp. 619, 621; Alderson v. White, 2 D. & J. 97.†

³ 2 Sp. 620, 622.‡

* 1 Jones Mortg. § 264.

† Klinck v. Price, 4 West Va. 4.

‡ St. Eq. Jur. 1018 b, c.

pressure amounting to fraud could alone have induced the person to enter into such a contract, and though the purchaser afterwards declare that he will take the money given as the consideration at any time, with damages for it, or the like; for if it is not a mortgage *in principio*, it shall not be so by parol agreement afterwards.¹ 508.

Where land is conveyed on trust, in case a sum and interest should not be paid by a day named, to sell, and after payment of principal, interest, and costs, to pay over the surplus and reconvey the unsold part of the estate; and the grantee covenants not to sell without giving six months' notice; and the grantor covenants to pay the debt and interest, but there is no proviso for redemption: this is a mere mortgage, and the grantor is entitled to six months' time to redeem.² 509.

Where the transaction is clearly one of purchase with a right of repurchase, the time limited ought precisely to be observed; and there is no principle on which the Court can relieve, if it is not so observed.³ 510.

In case the transaction is one of repurchase, and not of redemption, if the purchaser dies seized, and then the right of repurchase is exercised, the money will go to the real representatives, and not to the personal representatives, as it would in the case of a mortgage.⁴ 511.

¹ 2 Sp. 622, 623.

² Bell v. Carter, 17 Beav. 11.*

³ 2 Sp. 623.

⁴ 2 Sp. 624.

* See also Taylor v. Cornelius, 60 Pa. St.

If a transaction is to be considered in the light of a mortgage as to one party, it must as regards the other.¹ 512.

Mutuality.

III. 1. So long as the mortgagor continues in possession, the mortgagee's estate is not absolute, even at Law. For, by stat. 15 and 16 Vict. c. 76, ss. 219, 220, if an ejectment is brought by the mortgagee, provided no suit is pending in any Court of Equity for redemption or foreclosure, the payment of principal, interest, and costs will, except in certain cases, be deemed a satisfaction of the mortgage, and the Court may compel the mortgagor to reconvey the estate. But when the mortgagor has ceased to be in possession, and there has been a default in the payment of the money at the stipulated time, the estate of the mortgagee becomes absolute at Law. Yet this

III. Mortgagee's estate, rights, and remedies (a).

1. Mortgagee's estate.

¹ 2 Sp. 623.*

(a) On the subject of powers of mortgagees, see stat. 23 and 24 Vict. c. 145, Part II.

* The decisions of the Supreme Court of the United States, and the Circuit and District Courts, are uniform in admitting parol evidence to show that an absolute conveyance is in fact a mortgage. In *Russell v. Southard*, 12 How. 139, the Supreme Court declare that when it is alleged and proved that a loan was really intended, and the grantee sets up the loan as a payment of purchase-money and the conveyance as a sale, both fraud and a vice in the consideration are sufficiently averred and proved to require a Court of Equity to hold the transaction to be a mortgage. Jones Mortg. § 285, and see also Federal decisions referred to § 285 note 4, *id.* See also § 264. As to what constitutes a mortgage, see earlier English decisions in note 2 Coke upon Littleton (205 a), Am. ed.

estate is in Equity treated as a mere security for the principal and interest and costs properly incurred in relation to the mortgage, and follows the nature of the debt. And, although, where the mortgage is in fee, the legal estate descends to the heir of the mortgagee, yet in Equity it is deemed a chattel interest and personal estate, and belongs to the personal representatives as assets.¹ 513.

2. Mort-
gee's rights.
Possession,
leases, rents.

2. As to the mortgagee's rights: he is entitled to enter into possession of the lands, and to take the rents and profits, unless there is some agreement to the contrary; and if the security is insufficient, he may fell timber and sell it towards liquidation of his debt, and may open mines; but, with this exception, he may not commit waste. He may grant leases, subject to the equity of redemption, and avoid any leases that have been made by the mortgagor subsequently to his mortgage. He must, however, account for the rents he receives, or, but for his wilful default, might have received, and pay an occupation rent for such part as he may keep in his own possession.² 514.

If there are two independent tenements, the mort-

¹ Coote Mortg., 3d ed. 539; 2 Sp. 296.*

² St. § 1016, 1016 b; 2 Sp. 642, 645, 646, 648; Coote Mortg., 3d ed. 332, 343, 344; Millet v. Davey, 31 Beav. 470; Tudor's Lead. Cas. Eq., 3d ed. 975; Seton's Decrees, 3d ed. 382; Parkinson v. Hanbury, L. R. 2 H. L. 1.†

* Jones Mortg. § 699, 700.

† Jones Mortg. § 699, 1123. See also Hubbard v. Shaw, 12 Allen, 120.

gagee may take possession of one of them only, so as to become liable to account for default as to that alone. And so if part only of the property (as the land without the shooting or timber) is on lease, the mortgagee may, by taking the rent, make himself accountable for that alone.¹ 514a.

Where persons, who, though in fact, mortgagees, enter into possession of the rents and profits in another character (*e. g.*, as purchasers), they are not answerable for what, without wilful default, they might have received.² 515.

A mortgagee is not allowed to obtain any advantage out of the security beyond his principal and interest. 516.

Limit to mortgagee's advantage.

A mortgagee cannot, in the first instance, stipulate, that if the interest be not paid at the time, it shall be converted into principal.³ To convert interest into principal, the interest must first become due, and then there must be an agreement in writing signed, to make it principal, at least so as to affect the estate; and the interest cannot even then be turned into principal to the prejudice of subsequent incumbrances of which the mortgagee has notice at the time of the agreement.⁴ 517.

Conversion of interest into principal.

A stipulation that the mortgagee shall receive interest at £4 per cent. if regularly paid, but £5 per cent. if default be made, is good, if £5 per cent. is reserved by the deed.

Increase of interest on default in regular payment.

¹ *Simmins v. Shirley*, L. R. 6 Ch. D. 173.

² *Parkinson v. Hanbury*, L. R. 2 H. L. 1.

³ 2 Sp. 628.

⁴ 2 Sp. 656.

But if £4 per cent. only is reserved, a stipulation that £5 per cent. shall be paid, if the interest be not regularly paid, is in the nature of a penalty, against which the Court will relieve.¹(a) 518.

Leases to the mortgagor. Leases made by the mortgagor to the mortgagee at a rent, are looked upon with great suspicion, as likely to have originated in the mortgagee having taken advantage of the necessities of the mortgagor to obtain a lease upon terms upon which the property would not have been let except for those necessities.² 519.

What the mortgagee may add to his debt. The mortgagee in possession has a right to add to his debt any sums he may be compelled to pay for arrears of rent, or for maintaining the title to the estate, or for rebuilding the premises, or for necessary repairs, or the expenses of renewing a renewable leasehold, with interest from the time the sums were advanced. But he cannot, by contract or otherwise, entitle himself to make any charge for management.³ 520.

A mortgagee in a suit for redemption or foreclosure is entitled to his general costs of suit, unless he has forfeited them by some misconduct.⁴ It would be unsafe to deduce any other proposition from this case. 521.

¹ 2 Sp. 631.*

² 2 Sp. 632.

³ 2 Sp. 649, 650, 653.

⁴ *Cotterell v. Stratton*, L. R. 8 Ch. Ap. 295.

(a) As to the validity of an agreement for making a larger amount of principal payable in default of punctual payment, see *Thompson v. Hudson*, L. R. 2 Eq. 612; 2 Ch. Ap. 255.

* But whenever the rents and profits for a year exceed the arrears of interest, the balance should go towards the principal. See *Van Vronker v. Eastman*, 7 Metc. 157.

The mortgagee is not allowed to make any charge as a receiver, if he himself has ^{Allowance for receiver.} personally received the rents, even though it may have been agreed that he should be paid for his trouble in receiving them, and though a receiver might have been employed at the expense of the mortgagor. And before the stat. 23 and 24 Vict. c. 145, and independently of any express provision, it was only where the owner himself, in the ordinary course of management, would have had to employ one, that the mortgagee was entitled to employ a bailiff or receiver, unless with the sanction of the mortgagor.¹ 522.

A mortgagee of a West India estate may stipulate that the consignments shall be made to him. And, if out of possession, he may ^{Mortgage of West India estate.} take a certain reward for the management of the estate, provided he do not make that employment a condition. But when he takes possession, he is not at liberty to charge the mortgagor, whom he has ousted, for the trouble he takes on his own account; and he cannot charge or stipulate for commission on consignments, insurance, and the like, but stands in the position of the mortgagee in possession of an English estate.² 523.

As a mortgagee is not allowed any advantage beyond securing his principal and interest, where an advowson is mortgaged, and the living becomes vacant prior to the foreclosure, the mortgagee is compellable in Equity to present the nominee ^{Mortgage of advowson.}

¹ 2 Sp. 807.*

² 2 Sp. 630.

* Jones Mortg. § 1132.

of the mortgagor; even although nothing but the advowson is mortgaged, and the deed contains a covenant that on any avoidance the mortgagee shall present. But he may pray a sale of the advowson.¹ 524.

Pre-emption.

The mortgagee is at liberty to stipulate for the option of pre-emption, in case the mortgagor should determine to sell.² 525.

Production of deeds by a mortgagee.

A mortgagee is not bound to produce his mortgage deed, or indeed any of the deeds in his possession, to the mortgagor or any person claiming under him, until payment of the principal and interest due and his costs, though the application be made *bonâ fide*, only to obtain information with a view to paying off the mortgage.³ 526.

Right of mortgagee to devise the property.

As an incident to the right of the mortgagee, he is at liberty to devise the legal estate in the mortgaged property to trustees, if he thinks fit, instead of allowing it to descend to his heir-at-law; and the mortgagor must bear the costs of obtaining a reconveyance, although they may have been increased by such devise.⁴ 527.

Mortgagee ejecting or refusing tenant.

If a mortgagee in possession turns out or refuses to accept a responsible tenant, he is liable for any loss occasioned thereby.⁵ 528.

Priority.

Both at Law and in Equity, in the absence of particular circumstances, statutes, judgments, and recognizances, all rank according to their dates.⁶ And so in Equity do equitable charges of every kind, where the equities are equal in all other

¹ 2 Sp. 629.

² 2 Sp. 631.

³ 2 Sp. 655.

⁴ 2 Sp. 669.

⁵ 2 Sp. 806.

⁶ 2 Sp. 727; Coote Mortg., 3d ed. 410.

respects than that of priority of time.¹ And where money is lent on an equitable mortgage, without notice of a prior equitable agreement affecting the same property, the lender gains no priority over the party claiming under the prior equitable agreement, by getting in the legal estate, at least after he has notice of the circumstances.² But if a third incumbrancer, by mortgage, without notice of a second incumbrance at the time of lending his money, purchases the first legal mortgage, judgment, statute, or recognizance, even after notice of the second mortgage, so as to acquire the legal title, and holds both securities in his own right, Equity will tack both incumbrances together in his favor; so that the second ^{Tacking.} mortgagee will not be permitted to redeem the first, without redeeming the third also; on the principle, that where the equities are equal, the Law shall prevail. But if a puisne creditor, by judgment, statute, or recognizance, buys in a prior mortgage, he will not be allowed to tack his judgment to such mortgage, so as to cut out or postpone a mesne mortgage; because he did not originally advance his money on the immediate credit of the land, and by his judgment, he did not acquire any right in the land, but before the stat. 1 and 2 Vict. c. 110, only a lien on the land, which

¹ 2 Sp. 727-732; *Shropshire Union Railways, etc., Co. v. The Queen*, L. R. 7 H. L. 496; *Coote Mortg.*, 3d ed. 410; remarks of V.-C. Kindersley in *Rice v. Rice*, 2 Drewry, 78; *Cory v. Eyre*, 1 D. J. & S. 149.*

² *Mumford v. Stohwasser*, L. R. 18 Eq. 556.

* *Jones Mortg.* § 200.

might or might not be enforced on it;¹ although now, under the 13th section of that Act, a judgment will operate as a charge on real estate, except as regards purchasers, mortgagees, or creditors, who became such before the time for the commencement of the Act, and except so far as the stat. 23 and 24 Vict. c. 38, s. 1, and 27 and 28 Vict. c. 112, affect the case. 529.

Upon the principle, that, where the equities are equal, the Law shall prevail, if a first mortgagee, who has the legal estate, or the better right to call for it, lends to the mortgagor a further sum on another mortgage, or on a statute or judgment, or even if he lends a further sum on note, and it is distinctly agreed at the time to be on the security of the mortgaged property, he is entitled to retain till both sums are paid, as against a mesne mortgage, of which he had no notice at the time of the further advance.² Indeed, it may

¹ See St. § 412-416, 418, 421; 2 Sp. 734, 735, 737, 740; Coote Mortg., 3d ed. 209, 210, 383, 385, 389, 403, 407, 408; Spencer v. Pearson, 24 Beav. 266; but see 2 Sp. 722, 723.*

² St. § 417, and note; 2 Sp. 721, 735, 739; Coote Mortg., 3d ed. 409, 410; Tassell v. Smith, 2 D. & J. 713.†

* The English doctrine of tacking never gained any general recognition in this country, where the Registry Acts are held to be not only constructive notice but in effect declare the priority to be fixed by the registration. Jones Mortg. § 569, 1082. And in England tacking was abolished by the Vendors and Purchasers Act in 1874.

† The prevailing doctrine in this country is that a mortgagor may always redeem by paying the specific debt secured by the mortgage, together with such prior liens as the mortgagee may have been compelled to pay for the protection of the mortgage. Jones Mortg. § 1083.

be stated more generally, that if a mortgagee has the legal estate, and makes a further advance, without notice of any claim adverse to his title, he is entitled to tack the further advance to the original mortgage as against any such adverse claim.¹ But where a first mortgage extends to future advances, further advances made by the first mortgagee, after notice of the second mortgage, have no priority over the latter, even though the second mortgagee had notice of the nature of the first mortgage.² And if a transferee of a first mortgage advances a further sum, he cannot tack it as against an equitable mortgage subsequent to the original first mortgage, of which equitable mortgage the original first mortgagee had notice, though the transferee had no notice of it.³ 530.

A statute or judgment creditor who is the first incumbrancer, cannot, by buying a subsequent mortgage, tack it to his statute or judgment, because he did not advance his money on the immediate credit of the land.⁴ And a prior mortgagee, having a bond debt (which *per se* is not a charge on land), whether prior or subsequent to his mortgage, cannot tack it

¹ Young v. Young, L. R. 3 Eq. 801.

² Rolt v. Hopkinson, 25 Beav. 461; 3 D. & J. 177; 9 H. L. Cas. 514; Menzies v. Lightfoot, L. R. 11 Eq. 459.*

³ Pease v. Jackson, L. R. 3 Ch. Ap. 576. See Baker v. Gray L. R. 1 Ch. D. 491.

⁴ 2 Sp. 740.

* In this country mortgages made in good faith for the purpose of securing future debts have generally been sustained, both in the early and recent cases. See Jones Mortg. § 365. And § 368, *et seq.* as to effect after notice of subsequent liens.

against any intervening incumbrancer of a superior rank between his bond and mortgage, or against other creditors, or even against the mortgagor himself, or a purchaser of the equity of redemption, but only (to avoid circuitry of action) against the heir or beneficial devisee, if in the bond the heirs were expressly bound.¹ And as copyholds, prior to the stat. 1 and 2 Vict. c. 110, were not liable at Law to an extent, a judgment debt cannot be tacked to a mortgage of copyhold land.² 531.

By the stat. 37 and 38 Vict. c. 78, s. 7, "after the commencement of this Act, no priority or protection shall be given or allowed to any estate, right, or interest in land by reason of such estate, right, or interest being protected by or tacked to any legal or other estate or interest in such land; and full effect shall be given in every Court to this provision, although the person claiming such priority or protection as aforesaid shall claim as a purchaser for valuable consideration and without notice: Provided always, that this section shall not take away from any estate, right, title, or interest any priority or protection which but for this section would have been given or allowed thereto as against any estate or interest existing before the commencement of this Act." But this was repealed by the stat. 38 and 39 Vict. c. 87, as from the date of operation, "except as to anything duly done thereunder before the commencement of this Act." 532.

¹ St. § 418; 2 Sp. 723-5, 735; Coote Mortg., 3d ed. 393.

² Coote Mortg., 3d ed. 389.

When a puisne mortgagee has bought in a prior incumbrance, but the legal estate is vested in a trustee, or the puisne mortgagee has not obtained the legal title, or he takes *in autre droit*, the incumbrances are paid in the order of their priority in point of time, according to the maxim, *Qui prior est tempore, potior est in jure*, and the principle that he who has the better right to call for the legal title, or for its protection, shall prevail.¹ 533.

Where a legal mortgage is executed, and is registered (in Ireland), and the mortgagor assigns an apparently satisfactory reason for not handing over or producing the title-deeds to the mortgagee, the legal mortgage will not be postponed to a prior equitable unregistered mortgage, of which the legal mortgagee had no knowledge or notice.² 534.

Where a first mortgagee voluntarily, distinctly, and unjustifiably, through fraud or gross negligence, allows the mortgagor to retain the title-deeds, or allows the mortgagor to get possession of them, he will be postponed to a subsequent mortgagee or purchaser without notice of a prior mortgage. But the onus of proving such fraud or negligence is on the person seeking to postpone the other.³ So if he conceals his mortgage from a person

Postponement of a prior mortgagee.

¹ St. § 419; 2 Sp. 745.

² *Agra Bank v. Barry*, L. R. 7 H. L. 135.

³ St. § 393, and see § 1010; 2 Sp. 766, 767; *Finch v. Shaw*, 19 Beav. 500; s. c., *Colyer v. Finch*, 5 H. L. Cas. 905; *Carter v. Carter*, 3 K. & J. 617, 646-8; *Espin v. Pemberton*, 4 Drew. 333;

who, as he knows, is about to lend money to the mortgagor, he will be postponed to that person.¹ A second incumbrancer upon an equitable reversionary interest in stock, who has given notice of his incumbrance to the trustees of the property, whether he has inquired of them as to the state of the title or not, will be preferred to a prior incumbrancer, who has omitted to give notice of his incumbrance to the trustees.² And if a prior incumbrancer on real estate devised in trust for sale, omits to give notice to the trustee, before notice is given of a subsequent incumbrance, he will be postponed to the subsequent incumbrancer.³ But a mortgagee of an equitable estate in land not directed to be sold has no occasion to give notice to the trustees, either to complete his title as against his mortgagor, or to secure to himself his priority against subsequent incumbrancers.⁴ A declaration of trust of an outstanding term, with a delivery of the deeds creating and continuing the term, has been held to give a subsequent incumbrancer a better equity than a mere decla-

Dowle v. Saunders, 2 Hem. & M. 242; *Layard v. Maud*, L. R. 4 Eq. 397; *Briggs v. Jones*, L. R. 10 Eq. 92.*

¹ St. § 390; 2 Sp. 732, 766; *Wilson v. Wilson*, L. R. 14 Eq. 32.

² 2 Sp. 764.

³ *Lee v. Howlett*, 2 K. & J. 531; *Consolidated Investment and Insurance Company v. Riley*, 1 Gif. 371.

⁴ *Rooper v. Harrison*, 2 K. & J. 86.

* In America the doctrine of a mortgage by deposit of title-deeds has been adopted to a very limited extent only. It is not compatible with the registry system, and may be considered as generally rejected. *Jones Mortg.* § 185, 186.

ration of trust taken by a prior incumbrancer.¹ And if the first incumbrancer has a declaration of trust only by the borrower, and none by the trustee, and the second incumbrancer has a formal mortgage of the equity of redemption, and the trustee is a party to that deed, and declares himself to be a trustee for the second incumbrancer, the second will have a better equity to call for the legal estate than the first.² 535.

Independently of the stat. 37 and 38 Vict. c. 62, a charge created by an infant (whether representing himself to be an adult or otherwise) will be postponed to a subsequent mortgage executed by him when of full age.³ 536.

III. As to the remedies of the mortgagee to secure the discharge of the mortgage, a foreclosure is in common cases deemed the appropriate and exclusive remedy.⁴ 537.

III. Mortgagee's remedies.

Foreclosure.

An intermediate mortgagee is entitled to a foreclosure against the mortgagor and the subsequent mortgagees.⁵ A person entitled to a part only of the mortgage-money cannot foreclose a portion of the estate.⁶ Proceedings for foreclosure may be taken, notwithstanding a decree for redemption; for the mortgagor may make default.⁷ Where a decree of foreclosure is made against an infant heir or devisee of the mortgagor, the infant has a year and a day to show cause against the decree on his coming of age;

¹ St. § 421 b, and note; 2 Sp. 729.

² 2 Sp. 729.

³ *Inman v. Inman*, L. R. 15 Eq. 260.

⁴ St. § 1026.

⁵ 2 Sp. 674.

⁶ 2 Sp. 674.

⁷ 2 Sp. 675.

but he can only do this by showing error in the decree, or falsifying the accounts for fraud or error.¹ 538.

A foreclosure suit cannot be brought but within twenty years after the right to bring such suit first accrued, or within twenty years after the last payment of any part of the principal money or interest.² 539.

Sale. By the stat. 15 and 16 Vict. c. 86, s. 48,

on a foreclosure suit being instituted, the Court may decree a sale. Before that Act, where there was no power of sale inserted in the mortgage deed, Courts of Equity refused to decree a sale against the will of the mortgagor, except in these cases: (1.) Where the estate was insufficient to pay the incumbrances. (2.) Where the mortgagor was dead, and there was a deficiency of personal assets. (3.) Where the mortgage was of a dry reversion. (4.) Where the mortgagor died, and the estate descended to an infant. (5.) Where the mortgage was an advowson. (6.) Where the mortgagor became bankrupt, and the mortgagee prayed a sale. (7.) Where the mortgagor was dead, and the mortgagee, by his bill brought against the executor or administrator and the heir, prayed for

¹ 2 Sp. 680, 681.

² See stat. 3 and 4 Will. IV, c. 27, ss. 24, 28, and stat. 7 Will. IV, and 1 Vict. c. 28; Fisher Mortg. 153, 154; Sugd. Stat., 2d ed. 94; Coote Mortg., 3d ed. 449.*

* Payment is presumed from lapse of time, twenty years or more, or whatever may be the local statutory period of limitation. No presumption of payment, however, can arise from lapse of time when the mortgagee or his assignee is in possession of the land. *Probst v. Brock*, 10 Wall. 519. See also *Jones on Mortg.* § 915.

a sale of the mortgaged estate, alleging it to be a scanty security, and for the payment of any deficiency out of the general estate of the mortgagor. (8.) Where the land in mortgage was subject to a sale by the local Law, as in Ireland.¹ The ground of the distinction, as it respects the first seven of these cases, would appear to be this: that from the nature of the property, it would not be worth while to redeem it, or from the circumstances of the mortgagor, he or his representatives were unable to redeem it. 540.

Though a power of sale be harshly exercised, and at a time when, having a regard to the interests of the mortgagee, he would not have been advised to sell, yet the sale cannot be impeached on that account.² But where the power of sale is given to a trustee, it is his duty to attend equally to the interests of both parties.³ And a mortgagee ought not to exercise a power of sale for other purposes than the recovery of his money.⁴ And if he sells, after tender of principal and interest (and costs, unless they are unascertained, and the security ample), the sale will be set aside, as against him and a purchaser with notice of the tender.⁵ 541.

¹ St. § 1826; 2 Sp. 676-8. ² 2 Sp. 634, 646. ³ 2 Sp. 636.

⁴ *Robertson v. Norris*, 1 Gif. 421; affirmed on appeal.*

⁵ *Jenkins v. Jones*, 2 Gif. 99.†

* *Jones on Mortg.* § 1801, note.

† In this country foreclosure of mortgaged property is effected by judicial sale, and generally is the subject of statutory provisions, though independently of any statutory provisions, Equity has jurisdiction to order a sale and provide for carrying it out. *Jones on Mortg.* § 1573.

A sale may be made without notice to the mortgagor, and without his concurrence, unless that is made a condition.¹ 542.

Where notice to the mortgagor is required, a clause that a purchaser should not be required to ascertain that notice had been given, and that the mortgagee's receipt should be a sufficient discharge, does not apply to a case where the purchase is made with actual knowledge that such notice has not been given.² 543.

Where the surplus produce, on the execution of a power of sale in a mortgage in fee is directed to be paid to the mortgagor, his executors, etc., this is not of itself a conversion of the equity of redemption into personal estate. If the sale takes place in the lifetime of the mortgagor, the surplus is personal estate; but if he dies before the sale is made, the equity of redemption descends to the heir, and he is entitled to the surplus.³ 544.

A trustee for sale cannot become the purchaser.⁴ But a second mortgagee may buy under a power of sale from the first mortgagee; and in such case he will

¹ 2 Sp. 635; *Newman v. Selfe*, 33 Beav. 522.

² *Parkinson v. Hanbury*, 1 Drew. & Sm. 143.

³ 2 Sp. 636.

⁴ 2 Sp. 636; *Turner, L. J.*, in *Parkinson v. Hanbury*, 2 D. J. & S. 450.*

* *Jones on Mortg.* § 1876; *Michoud v. Girod*, 4 How. Sup. Ct. 503. But where the sale is made by judicial process, there is usually no restraint upon the purchase of the property by the mortgage creditor. *Jones on Mortg.* § 1882.

obtain, as against the mortgagor, an irredeemable title to the property.¹ 545.

Where there are several incumbrances, a decree for sale of an incumbered estate does not alter the relative rights of the parties; the purchase-money is substituted for the estate.² 546.

A mortgagee who sells a part of the mortgaged property, must apply the proceeds of sale, first, in payment of interest and costs; and then he must either pay the balance to the mortgagor, or apply it in reduction of the principal.³ 547.

The Court will not prevent a mortgagee from using all the remedies belonging to his character of mortgagee, and exercising all the powers that are given to him, as and when he pleases, even concurrently.⁴ A power of sale is only an additional remedy, and therefore does not interfere with the right of the mortgagee to foreclosure.⁵ If a debt is secured by the mortgage of real estate, and also by covenant and collaterally by bond, the mortgagee may pursue all his remedies at the same time. If he obtains full payment on the bond or covenant, the mortgagor is, by the fact of payment, entitled to redeem the

Concurrent
remedies of
mortgagee.

¹ *Parkinson v. Hanbury*, 1 Dr. & Sm. 143; *Shaw v. Bunny*, 33 Beav. 494; 2 D. J. & S. 468; *Kirkwood v. Thompson*, 2 Hem. & M. 392.*

² 2 Sp. 678.

³ *Thompson v. Hudson*, L. R. 10 Eq. 497.

⁴ 2 Sp. 634.†

⁵ 2 Sp. 636.†

* *Jones on Mortg.* § 1884 and note.

† *Id.* § 1215.

† *Id.* § 1221.

estate, and foreclosure is prevented or not allowed. But if the mortgagee obtains only part payment on the bond or covenant, he may go on with his foreclosure suit, and, giving credit in account for what he has recovered on the bond or covenant, he may foreclose for non-payment of the remainder. On the other hand, if he obtains a foreclosure first, and alleges that the value of the estate is not sufficient to satisfy the debt, he is not absolutely precluded from suing on the bond or covenant; but it is held by doing so he gives to the mortgagor a renewed right to redeem, or, in other words, opens the foreclosure; and, consequently, upon the commencement of an action against the mortgagor on the bond after foreclosure, he may proceed to redeem, and upon payment of the whole debt secured by the mortgage, he is entitled to have the estate back again, and the securities given up. After foreclosure, therefore, the Court will not restrain the mortgagee from suing on the bond, provided he retains the mortgaged estate in his own power, ready to be redeemed, in case the mortgagor should think fit to avail himself of the opening of the foreclosure.¹ 548.

But if a mortgagee (except under a power of sale) so deals with the mortgaged estate as to render it impossible for him to restore it on full payment, the Court will prevent his suing at Law to recover the mortgage-money; as where he joins transferees of the equity of redemption in an alienation of the property

¹ 2 Sp. 682.*

* See also Jones on Mortg. § 1218, 1219.

without being authorized by the mortgagor, and receives no part of the purchase-money.¹ 549.

If a mortgagee sells under a power of sale and the sale does not realize enough to pay off the mortgage debt and interest, he may sue the mortgagor on his covenant for the balance.² 550.

IV. We have already seen that as long as the mortgagor continues in possession, he has a right of redemption, even at Law, under the stat. 15 and 16 Vict. c. 76, ss. 219, 220, if an action of ejectment is brought against him, and no suit for redemption or foreclosure is pending in a Court of Equity. And until foreclosure, the mortgagor, whether in possession or not, is considered in Equity as substantially the owner of the estate, though his ownership is subject to restrictions for the protection of the mortgagee. Hence, if the mortgagor applies to be allowed to redeem, before the right of redemption is lost by a lapse of twenty years, during which no acknowledgment has been made by the mortgagee of the mortgagor's title or of his right of redemption, the mortgagee will then be treated precisely as a trustee for the mortgagor, inasmuch as he will be compelled to reconvey the estate, and account for every kind of profit that he has made in the ordinary way, or which, but for his wilful default, he might have made.³ 551.

IV. Mortgagor's estate and rights.

Equity of redemption.

¹ *Palmer v. Hendrie*, 27 Beav. 349; *Rudge v. Richens*, L. R. 8 C. P. 358.

² *Rudge v. Richens*, L. R. 8 C. P. 358.

³ See St. § 1013, 1016, 1028 a; and 3 and 4 Will. IV, c. 27, s. 28; 2 Sp. 644, 645, 648, 710, 806.

The common equity of redemption, or ordinary right which the mortgagor has in Equity of redeeming the estate, is so inseparable an incident to a mortgage, that it cannot be disannexed from such a transaction, or controlled even by an express agreement.¹ And this constitutes an equitable estate in the land, which may be granted, devised, and entailed; and if entailed, might have been barred by a fine or recovery, and may now be barred by a disentailing deed, and is liable to a tenancy by the curtesy, and since the statute 3 and 4 Will. IV, c. 105, s. 2, to dower.² 552.

A mortgagor may, by a subsequent deliberate act, extinguish his equity of redemption. Thus, a mortgagee may purchase the equity of redemption of the mortgagor. But the court views such a transaction with jealousy.³ And if a mortgagor in embarrassed circumstances conveys his equity of redemption (under pressure for payment of the mortgage debt), for a sum considerably less than its value, the sale will be set aside.⁴ 553.

The owner of the equity of redemption of part of the estate in mortgage cannot separately redeem his part; the mortgagee has a right to insist that the whole of the mortgaged estate shall be redeemed together.⁵ And where a mortgagee lends two distinct sums to the same mortgagor on two securities, although

¹ St. § 1019; 2 Sp. 618, 619, 628.

² St. § 1015; 2 Sp. 642, 645.

³ 2 Sp. 654.* ⁴ *Ford v. Olden*, L. R. 3 Eq. 461. ⁵ 2 Sp. 666.†

* *Jones on Mortg.* § 711.

† *Jones on Mortg.* § 1072.

they be only equitable securities, and although created by two distinct instruments, and at different times, and although the property in one be real and the other personal, the mortgagor, or any one claiming under him (even a purchaser of the equity of redemption or mortgagee of the estate sought to be redeemed, who had no notice of the mortgage on the estate not sought to be redeemed), cannot redeem the property comprised in one security without redeeming the other also; for the person who has the two mortgages has a right to consolidate them, so as to insist on both being paid off together. At least this is the case where the security not desired to be redeemed is defective in title or deficient in value. And where two mortgages of distinct estates originally vested in different mortgagees are transferred to one person, even with notice of a second mortgage, the second mortgagee cannot redeem the one estate without the other. And the transferees of a mortgage made by a person who afterwards becomes bankrupt, are entitled to tack a debt insufficiently secured by a previous mortgage of other property made to them directly, though they took the transfer after and with notice of the adjudication. And where the mortgagee has sold one estate under a power of sale, he may apply the balance of the proceeds of that estate, after payment of the mortgage debt upon it, towards payment of the debt upon the other.¹ 554.

¹ *Vint v. Padget*, 1 Gif. 446; 2 D. & J. 611; 3 D. F. & J. 611; *Selby v. Pomfret*, 1 Johns. & H. 336; 3 D. F. & J. 595; St. § 1023, n.; 2 Sp. 651, 666, 726; *Smith's Compendium of the Law of Prop-*

Who may
redeem.

Even a tenant for life, a tenant by the curtesy, a jointress, a tenant in dower in some cases, a reversioner, a remainder-man, a judgment creditor, a tenant by *elegit* or by statute merchant, the lord of a manor holding by escheat (as regards a mortgage for a term of years, created by a mortgagor who has died without heirs, though not as regards a mortgage in fee, under which the whole estate has passed to the mortgagee, so that there can be no escheat), and indeed every other person having a legal or equitable interest in or lien on the land, may insist on redeeming the mortgage, in order duly to enforce his claim; and when any such person does so redeem, he or she becomes substituted to the rights and interests of the original mortgagee. But, as a general rule, a *cestui que trust* must redeem through his trustee; and no creditor or annuitant or legatee of the mortgagor, who has not a specific security upon the property mortgaged, can redeem, though the mortgaged property would, if redeemed, be applied in a course of administration in discharge of his claims.¹ As regards the right to redeem, there is no substantial difference be-

erty, 5th ed., par 1060; *Wicks v. Scrivens*, 1 Johns. & H. 215; *Neve v. Pennell*, 2 Hem. & Mil. 170; *Bevor v. Luck*, L. R. 4 Eq. 237.*

¹ St. § 1023; 2 Sp. 660-3; *Mildred v. Austin*, L. R. 8 Eq. 220; *Dawson v. Bank of Whitehaven*, L. R. 4 Ch. D. 639.†

* But in this country the prevailing doctrine is, that a mortgagor may always redeem by paying the specific debt secured by the mortgage, together with such prior liens as the mortgagee may have been compelled to pay for the protection of the mortgage. See *Jones on Mortgage*, § 1083, and cases there cited.

† *Jones on Mortgage*, § 1055, *et seq.*

tween a mortgage in the form of a trust for sale and a mortgage in the ordinary form.¹ 555.

A purchaser of an equity of redemption cannot redeem an existing mortgage until his purchase is completed.² 556.

Every person who has a right to redeem the mortgage, may redeem any prior incumbrancer, on payment of principal, interest, and costs due to him; the redeeming party being also liable to be redeemed by those below him, who are all liable to be redeemed by the mortgagor.³ 557.

In settling the accounts between the mortgagor and mortgagee, where the latter has ^{Annual rests.} been in possession, sometimes annual rests are made, so that the excess of rent or value beyond the interest may be applied in liquidation of the principal. As a general rule, rests are not made where the interest of the mortgage is in arrear at the time when the mortgagee takes possession. But where there is a special reason for making annual rests, as where no arrears or interest are due at the time when the mortgagee enters in possession, or any agreement exists between the parties by which the interest in arrear is converted into principal, there, and in such cases, annual rests will be made.⁴ Where the mortgagee has sold, and

¹ *Wicks v. Scrivens*, 1 Johns. & H. 215; *Kirkwood v. Thompson*, 2 Hem. & M. 392.

² 2 Sp. 668.

³ 2 Sp. 665.

⁴ St. § 1016 a; 2 Sp. 809; *Scholefield v. Lockwood* (No. 3), 32 Beav. 439.*

* *Jones on Mortg.* § 1139, 1140. See also *Gibson v. Crehore*, 5 Pick. 160.

has retained sale-money beyond the interest and costs due, a rest must be made at the time of the receipt of such moneys.¹ Annual rests will equally be directed in respect of the occupation rent fixed on a mortgagee in possession, as in respect of rents received.² 558.

Possession.

The mortgagor is not entitled to the possession in respect of his equitable estate, unless there is some special agreement to that effect, but he holds it solely at the will of the mortgagee, who may at any time, without giving any prior notice, recover the same by ejectment against him, unless he is ready to pay principal, interest, and costs, or against his tenants under a tenancy created subsequently to the mortgage; and he is not even entitled to reap the crop. But so long as he continues in possession by the permission of the mortgagee, he is entitled to take the rents and profits in his

Rents.

own right, without rendering any account whatever to the mortgagee, though the mortgaged property may have become an insufficient security. But he will not be permitted to do anything

Waste.

which may diminish the security of the mortgagee. Yet he may cut down timber when in possession, unless the land alone would be a scanty security.³ 559.

Suits for possession of land by mortgagors.

By the Judicature Act, 1873 (36 and 37 Vict. c. 66), s. 25 (5), "A mortgagor entitled for the time being to the possession or

¹ *Thompson v. Hudson* L. R. 10 Eq. 497.

² 2 Sp. 811.

³ St. § 1017; 2 Sp. 646, 648.

receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person." 560.

A mortgagee in possession is not obliged <sup>Expendi-
ture.</sup> to lay out money any further than to keep the property in necessary repair; and he has no right to make it more expensive for the mortgagor to redeem than may be required for the purpose of keeping the property in a proper state of repair, and of protecting the title to the property. Hence he will not be allowed for general improvements made without the consent or acquiescence of the mortgagor.¹ 561.

V. Where a mortgage is by assignment of a leasehold interest, the mortgagee, unless <sup>V. Mort-
gage of
leasehold.</sup> there is a special provision to the contrary, as between the mortgagor and the mortgagee, takes the leasehold subject to the covenants and obligations of the original lease. But if an underlease, instead of an assignment, is taken, the mortgagee is protected.² 562.

A mortgage, whether legal or equitable, of leasehold

¹ St. § 1016 b; 2 Sp. 808.*

² 2 Sp. 614.

* Jones on Mortg. § 1126-1128.

premises, includes the goodwill of a trade followed on the premises, and the fixtures.¹ 563.

Mortgage of renewable leasehold. Neither the mortgagor nor the mortgagee of a renewable leasehold is bound to renew, unless it is a part of his contract to do so. If a renewable leasehold is assigned by way of mortgage, an agreement between the landlord and the mortgagee, without the concurrence of the mortgagor, will not bind the mortgagor.² 564.

VI. Rent instead of interest. VI. Where the relation of mortgagor and mortgagee subsists, it is hardly possible that an agreement under which the mortgagee is to hold the land at a rent as an equivalent for interest can be supported; it being considered, independently of the question as to usury in cases under the old law, to be against public policy that such agreements should be permitted to take place between parties, one of whom has an obvious advantage over the other.³ 565.

VII. Mortgage for costs. VII. A solicitor may take a mortgage security from his client for costs already due, but (except so far as the stat. 33 and 34 Vict. c. 28, may apply) not for costs to become due.⁴ 566.

VIII. Conveyance in trust to sell. VIII. Lands are sometimes conveyed by way of security to a third person agreed upon by the borrower and a lender, or to the lender himself, in trust, upon non-payment of the loan at the appointed time, and usually upon notice, to sell the estate, to satisfy the debt out of the proceeds. This is a species of mortgage. It is not such a trust for sale

¹ 2 Sp. 637.

² 2 Sp. 650; Coote Mortg., 3d ed. 122, 344.

³ 2 Sp. 617.

⁴ 2 Sp. 630.

as the mortgagor can enforce; because the discretion as to selling or not is in the mortgagee alone. On the other hand, the mortgagee cannot foreclose, but is limited to his remedy by sale. And in this case, though the mortgagor covenant to join, the purchaser cannot require that he should join in the conveyance.¹ 567.

¹ 2 Sp. 634; *Locking v. Parker*, L. R. 8 Ch. Ap. 30.*

* Jones on Mortg. § 1764, *et seq.* The delay and expense incident to a foreclosure and sale in Equity have brought power of sale mortgages and trust deeds into general use both in England and in this country. A power of sale, whether vested in the creditor himself or in a trustee, affords a prompt and effectual security. Although in several of the States a mortgage is by statute or judicial interpretation declared to be a mere security for the payment of a debt, and not a conveyance of the legal title, yet this view does not in any way impair the doctrine of powers to sell. A deed of trust is often preferred to a mortgage on account of the intervention of a disinterested person as trustee, who becomes the agent of both parties, and should perform his duties with the strictest impartiality (*Sherwood v. Saxton*, 63 Mo. 78, and cases cited). A resort to proceedings in Equity is more frequent under deeds of trust than with mortgages, sometimes to control the adverse action of the trustee, and a trustee who has once accepted the trust is not allowed to lay it down without the assent of the beneficiary or the decree of a Court of Equity (*Drane v. Gunter*, 19 Ala. 731). The sale, however, is by virtue of the power and not of the decree when the Court enforces the power, and upon the death of a trustee a Court of Equity has power to appoint a new trustee to execute the power of sale (*Holden v. Stickney*, 2 MacArthur (D.C.), 141). No particular form of words is necessary to constitute the power. The essential provisions of it should be clearly and fully expressed, for the title of the purchaser under the power rests upon the authority there given (*Graeme v. Cullen*, 23 Gratt. (Va.), 266).

If in any case it is attempted to pervert the power from its legitimate purpose, and to use it for the purpose of oppressing the debtor, or of enabling the creditor to acquire the property himself,

JX. Defective mortgage.

IX. Where a person affects to make a mortgage, but the deed is defective, further assurance will be enforced in Equity.¹ If a

¹ 2 Sp. 639.

a Court of Equity will enjoin the sale, or will set it aside after it is made (*Jones's Mortg.* § 1801). So long as the mortgagee is clearly within the authority given by the power, an intended sale will not be restrained, although the exercise of it be harsh and improvident. The grounds for interference must be very strong, and must show probable irreparable injury or a clear breach of trust (*Id.* § 1802). The notice usually required in powers of sale is a publication for a certain length of time in one or more newspapers published in the county in which the premises are situate. And when the validity of a sale under a power is questioned by the debtor for defect of advertisement, the burden of proving a proper advertisement rests upon the purchaser or other party insisting on the sale (*Id.* § 1827, 1829). The advertisement of the sale should fully comply with the terms of the power, and give with clearness all reasonable information as to proposed sale, that it is by virtue of a power, etc., and that there has been a default (*Id.* § 1839). The property should be properly described, and the notice must show who orders the sale (*Id.* § 1843). A trustee under a deed of trust is bound to render the sale as beneficial as possible to the debtor, and should sell in parcels (if the property is susceptible of subdivisions) if it will bring more than selling as a whole (*Id.* § 1859). The purchaser takes a title divested of all incumbrances made since the creation of the power (*Id.* § 1654, 1897).

A mortgagee or trustee with power to sell must sell fairly and for the best price he can obtain. If a trustee permits property to be sacrificed by a sale for a small fraction of its value, the sale will be set aside (*Id.* § 1909). A secret arrangement between the mortgagee and a person interested in buying the property, whereby competition is prevented, avoids the sale (*Id.* § 1910). Any fraud or deception practiced on the owner, in consequence of which he has lost his rights, is sufficient ground for setting aside the sale

man, after making a defective mortgage to one person, makes a mortgage by an assurance which is effectual to another person, the second will prevail, if he lent his money on the security of the land, and without notice; because he has equal equity and the legal title.¹ But (so far at least as the stat. 1 Vict. c. 110, does not alter the case) a defective mortgage would prevail against a mere subsequent judgment creditor, who is in the nature of a volunteer as regards his lien on the land.² 568.

X. A mortgagee, whose money is not paid on the day appointed by the proviso, is entitled to six months' notice previously to its being paid. If the money is not tendered on the day of the expiration of the notice, the mortgagee is entitled to another six months' notice. If the mortgagee refuse to receive his money after due notice, interest will cease from the time of the tender, provided the mortgagor keep the money continually ready and make no profit by it. The first mortgagee is bound to accept payment of his principal, interest, and costs when tendered by a second mortgagee, and thereupon to con-

X. Pay-
ment of
debt.

¹ 2 Sp. 639.

² 2 Sp. 639, 640.*

(Id. § 1911). But mere inadequacy of price is no ground for vacating a sale if fairly conducted in every respect (Id. § 1915).

It is a settled rule of law in several States that where a mortgage or deed of trust has been given to secure the payment of several notes, which become due at different times, the notes have priority of lien in the order in which they become payable (Id. § 1699, 1939, and cases cited).

* See also Jones on Mortg. § 460, 461.

vey to him the estate, whether the tender be made with or without the privity of the mortgagor; and, generally speaking, he is justified in accepting payment from, and transferring the legal estate to, any person who tenders the principal, interest, and costs due to him, that person being interested in the equity of redemption.¹ 569.

If the condition is for payment to the mortgagee, his heirs *or* his executors, the mortgagor, after the death of the mortgagee and before forfeiture, may pay either the heir or the executor, as he pleases, but after forfeiture the money is to be paid to the executor; and even if paid to the heir before forfeiture, it belongs to the executor; because in Equity a mortgage debt is considered as part of the mortgagee's personalty; the money came from that source, and is to be returned to it.² 570.

When an agreement for a mortgage contains a stipulation that the principal money shall not be called in for a certain time, the postponement is conditional on punctual payment of interest.³ 571.

If a mortgagor pays off the principal to the solicitors of the mortgagee, instead of the mortgagee himself, without ascertaining that they are authorized to receive it, he does it at his own risk. So that if the solicitors misappropriate the money, the mortgagor

¹ 2 Sp. 652, 653.*

² See 2 Sp. 650, 651.†

³ *Seaton v. Twyford*, L. R. 11 Eq. 591.

* *Jones on Mortg.* § 877, 878.

† *Id.* § 1931, note.

will remain liable to the mortgagee or his assignee.¹ 572.

XI. There is a kind of mortgage called a Welsh mortgage, which, however, has now fallen into disuse, in which there is no condition or proviso for repayment at any time. The agreement is that the mortgagee, to whom the estate is conveyed, shall receive the rents till his debt is paid; and in such case the mortgagor and his representatives are at liberty to redeem at any time.² 573.

XI. Welsh mortgage.

XII. Where a husband is seized *jure uxoris*, and he and his wife join in a mortgage, reserving the equity of redemption to him and his heirs, he has the equity of redemption *jure uxoris* as he before had the legal estate, unless it is evident that the transaction is more than a mere mortgage, or the limitation of the estate is perfectly distinct from the equity of redemption.³ But at the same time the intention to alter the previous title may be manifested by the language of the proviso itself, and there is no necessity for an express declaration or a recital to that effect.⁴ 574.

XII. Mortgage of wife's estate.

Where a mortgage is made of the wife's lands, to secure money borrowed by the husband—and in the

¹ Withington v. Tate, L. R. 4 Ch. Ap. 288.

² 2 Sp. 616.

³ 2 Sp. 644. See also Earl of Huntingdon v. Countess of Huntingdon, 2 Lead. Cas. Eq., 2d ed. 388, *et seq.*; Eddlestone v. Collins, 3 D. M. & G. 1; Whitbread v. Smith, Id. 727; Heather v. O'Neil, 2 D. & J. 399; In re Betton's Trust Estates, L. R. 12 Eq. 553.

⁴ Atkinson v. Smith, 3 D. & J. 186, 192.

absence of evidence to the contrary, the loan will be presumed to have been obtained for his purposes—his estate, especially where he covenants to pay the debt, is made to pay the mortgage-money, at the instance of the wife or of the heir of the wife; although the husband may have paid off the mortgage, and taken an assignment in trust for himself, his executors, etc., and though by consequence legacies given by the husband may be defeated; for the wife joining in the security does not make it less the debt of the husband, and her estate is considered as surety only for the debt.¹ 575.

XIII. First mortgagee answerable to second.

XIII. After notice of a second mortgage, the first mortgagee is answerable to the second for the rents and profits he has received or might have received.² And where the mortgagee enters, and then permits the mortgagor to receive the rents, he will be accountable, as mortgagee in possession, to a subsequent incumbrancer, of whose incumbrance he had notice.³ 576.

XIV. Title.

XIV. The mortgagee, or those claiming under him, cannot dispute the title of the mortgagor.⁴ 577.

XV. Assignment of mortgage.

XV. An assignment of a mortgage is an assignment of the debt, and it is not necessary that notice should be given to the mortgagor.⁵ 578.

If a mortgagee in possession assigns over his mort-

¹ 2 Sp. 841, 842. See *Scholefield v. Lockwood* (No. 1), 32 Beav. 434, as a case to which this doctrine did not apply.

² 2 Sp. 648.

³ 2 Sp. 806.

⁴ 2 Sp. 654.

⁵ 2 Sp. 645; *Withington v. Tate*, L. R. 4 Ch. Ap. 288.

gage without the assent of the mortgagor, the mortgagee is still bound to answer for the profits both before and after the assignment, though assigned only for his own debt; for he is under a trust to answer for the profits of the pledge.¹ 579.

The assignee of a mortgagee cannot stand in any different character or hold any different position from that of the assignor himself.² 580.

Where a person obtains a mortgage without consideration and the mortgagee transfers it to a third person, who has no notice of the want of consideration, neither the transferor nor the transferee can enforce it, but it will be ordered to be cancelled.³ 581.

If a person pays off a first mortgage, and takes the deeds and a new mortgage without notice of a second equitable mortgage, he will be entitled to priority over the second equitable mortgagee who had notice of the first mortgage.⁴ 582.

XVI. The purchaser of a mortgage, as a general rule, has a right to claim, against the mortgagor, and all deriving title under him, the full amount of what is due on the security, whatever he may have given; for as he takes the risk, so he is allowed the gain, if any. But an heir, a trustee, an agent, or an executor of the mort-

XVI. What a purchaser of a mortgage has a right to claim.

¹ 2 Sp. 656.

² Walker v. Jones, L. R. 1 P. C. 50. See Pease v. Jackson, L. R. 3 Ch. Ap. 576.

³ Parker v. Clarke, 30 Beav. 54.*

⁴ Pease v. Jackson, L. R. 3 Ch. Ap. 576.

* Jones on Mortg. § 1470.

gagor, can only claim the amount which he gave for it; unless he has bought in that security to protect one of his own.¹ 583.

XVII. Gift of mortgage security. XVII. A gift of a mortgage security is a gift of all the testator's interest in the money and the security.² 584.

XVIII. Devise by a mortgagee. XVIII. Where a testator devises all his real estates, whatsoever and wheresoever, the legal estate in mortgaged premises will pass by the will, unless a different intention is to be collected from the context. But it would seem that a general devise, or even a particular devise of the mortgaged lands, will not of itself have the effect of carrying the beneficial interest in the mortgage.³ 585.

XIX. Right of purchaser of equity of redemption. XIX. Generally speaking, a purchaser of an equity of redemption, with notice of subsequent incumbrances, stands in the same situation, as regards the subsequent incumbrancers, as if he had himself been the mortgagor.

Right of second equitable mortgagee. And where a second equitable mortgagee, who becomes such without notice of the first equitable mortgage, afterwards, with notice of the first incumbrance, obtains the legal estate from the mortgagor, he holds the legal estate subject to the first incumbrance.⁴ 586.

¹ 2 Sp. 657, 739; *Hobday v. Peters* (No. 1), 28 Beav. 349.

² 2 Sp. 655.

³ 2 Sp. 655; *Braybroke v. Inskip*, Tudor's Lead. Cas. on R. P., 2d ed. 876, *et seq.*; *Bowen v. Barlow*, L. R. 11 Eq. 454; 8 Ch. Ap. 171.

⁴ 2 Sp. 746.*

* *Jones on Mortg.* § 740, 752, *et seq.*

XX. If a mortgage is cancelled by a mortgagee, and it is so found in his possession on his death, it is as much a release as cancelling a bond. But it does not convey or revest the estate in the mortgagor; for that must be done by some deed; the legal estate in such a case descends upon the heir; but there being no debt at Law or in Equity, at least upon the mortgage, the Court holds the heir to be a trustee for the mortgagor.¹ 587.

XX. Extinguishment of the mortgage debt by cancelling.

XXI. If the debt is paid off, the mortgage is extinguished in Equity, and the mortgagee is deemed a trustee for the mortgagor.² And an extinguishment of the mortgage debt will take place where the mortgage becomes the absolute owner of the equity of redemption; for then the equitable estate merges in the legal; unless it was apparently his intention, or it is manifestly for his interest, to keep the incumbrance alive.³ 588.

XXI. Or by payment,

or by merger.

Where a mortgagor and mortgagee join in conveying the mortgaged premises to a new mortgagee, the old mortgage *may* not be extinguished, as regards priority over a subsequent incumbrance, though the old mortgage debt be paid off by the new mortgagee, and though there be a new covenant by the mortgagor, and a new proviso for redemption, and though there be no assignment of the old mortgage debt, if the operative words extend in the usual way to all the right and title of the old mortgagee in the premises.⁴ 589.

¹ 2 Sp. 749.

² 2 Sp. 640.

³ St. § 1035 b; see *Hayden v. Kirkpatrick*, 34 Beav. 645.

⁴ *Phillips v. Gutteridge*, 4 D. & J. 531.

XXII. The mortgagee cannot be compelled to reconvey until the money is in pocket; payment into Court is not sufficient.¹ 590.

XXIII. Where a person makes a mortgage in fee, and dies intestate without heirs, the equity of redemption does not escheat to the Crown, but belongs to the mortgagee, subject to the debts of the mortgagor.² 591.

SECTION II.

OF EQUITABLE MORTGAGES.

BESIDES mortgages created by a formal instrument, and valid at Law as well as in Equity, there are Equitable Mortgages. These are created either by a written instrument, or by a deposit of deeds with or without writing.³ Any written agreement or directions, or other instrument in writing, showing that it was the intention of a debtor thereby to make his land or other property a security for the debt, will be

¹ 2 Sp. 653.

² Beale v. Symonds, 16 Beav. 406.

³ 2 Sp. 777; Russel v. Russel, 1 Lead. Cas. Eq., 2d ed. 541, *et seq.**

(a) On this subject see stat. 7 and 8 Vict. c. 76, s. 9, repealed by stat. 8 and 9 Vict. c. 106, s. 1; and see stat. 13 and 14 Vict. c. 60, ss. 19, 20; 37 and 38 Vict. c. 78, s. 4.

* Mandeville v. Welch, 5 Wheat. 277; Jones, Mortg. § 163, 179.

equivalent in Equity to an actual mortgage by deed or to a pledge.¹ And a deposit of all or some of the material deeds or documents of title constitutes an equitable mortgage, though they do not show a good title in the depositor (as where they do not comprise the conveyance to him), if made with a creditor (whether with or without any written memorandum, and even without a word passing) as security for an antecedent debt, or on a fresh loan of money, and if received by him (as far as it would appear) in good faith and in the belief that they were the title-deeds of the estate.² 592.

Where the Court is satisfied of the good faith of the person who has got a prior equitable charge, and that he was led to believe that he had got the necessary deeds, the Court will not hold that he was bound to examine the deeds. And if he does not, and they do not show any title in the mortgagor, yet such equitable mortgagee is entitled to priority, even over a second equitable mortgagee, without notice, who has deeds which show a complete title in the mortgagor, and has a memorandum of deposit.³ This is only defensible on the ground of public convenience, in facilitat-

¹ 2 Sp. 777-779; *Fenwick v. Potts*, 8 D. M. & G. 506; *Daw v. Terrel*, 33 Beav. 218.*

² St. § 1020; 2 Sp. 781; *Lacon v. Allen*, 3 Drew. 579; *Roberts v. Croft*, 24 Beav. 223; 2 D. & J. 1; *Dickson v. Muckleston*, L. R. 8 Ch. Ap. 155.†

³ *Dixon v. Muckleston*, L. R. 8 Ch. Ap. 155.

* *Jones Mortg.* § 187; *Edwards v. Trumbull*, 50 Pa. St. 509.

† *Jones Mortg.* § 180, 182.

ing loans by means of equitable mortgages. It illustrates the great danger of lending on such securities. 593.

The deposit will cover subsequent advances, if it clearly appears that they were made upon the faith of that security, or that the original deposit was continued with an agreement for a further advance.¹ 594.

The meaning and object of the deposit may be explained by parol evidence.² And evidence is admissible to show that a delivery of deeds to a third person, by a person not being the party whose estate is sought to be charged, even though no money passed at the time, constituted an equitable mortgage.³ 595.

An equitable mortgage, by deposit of title-deeds, will have preference over a subsequent purchaser or mortgagee of the legal estate with notice; but not over a subsequent purchaser or mortgagee who has the legal estate, and had no notice of such equitable mortgage.⁴ 596.

An equitable deposit with memorandum of charge by a devisee is an alienation which *pro tanto* prevents a creditor of the testator from subsequently obtaining a charge on the estate as assets, under the stat. 3 and 4 Will. 4, c. 104.⁵ 597.

An equitable incumbrancer on property, who has distinct notice of a prior incumbrance, cannot, by concealing his knowledge from his assignee, give such assignee a better right than that which he himself possesses.⁶ 598.

¹ 2 Sp. 781.

² 2 Sp. 784.

³ 2 Sp. 784.

⁴ Coote Mortg., 3d ed. 170.

⁵ British Mutual Investment Co. v. Smart, L. R. 10 Ch. Ap. 567.

⁶ Ford v. White, 16 Beav. 125.

Where a trustee of funds invested on a mortgage in his name, deposits the deeds, without notice of the trust, to secure an advance to himself, the *cestuis que trust* are entitled to priority over the equitable mortgagee, and to delivery up of the deeds.¹ 599.

Where a simple contract debt has been secured by a deposit of deeds, unaccompanied by any stipulation as to interest, or any memorandum from which an exclusion of interest can be inferred, the mortgagee is entitled to interest at the rate of £4 per cent., on the principle that a deposit of deeds to secure a loan is to be considered as an agreement to execute a mortgage of the property comprised in the deeds with interest.² 600.

In *James v. James* (L. R. 16 Eq. 153), the Lord Justice James (sitting for V.-C. Wickens) held that the relief to which an equitable mortgagee by deposit is entitled, is foreclosure and not sale. But the point seems doubtful.³ 601.

SECTION III.

OF MORTGAGES AND PLEDGES OF PERSONAL PROPERTY.

I. A MORTGAGE of personal property is a transfer of the ownership itself, subject to be defeated by the performance of the condition within a certain time. But a pledge only

I. A mortgage and a pledge distinguished from each other.

¹ *Newton v. Newton*, L. R. 6 Eq. 135.

² *In re Kerr's Policy*, L. R. 8 Eq. 331.

³ See St. § 1026; 2 Sp. 676-8.

passes the possession, or at most a special property, to the pledgee, with a right of retainer till the debt is paid or the engagement is fulfilled.¹ 602.

II. Tacking. II. A mortgage or a pledge of personal property may be held till a subsequent debt or advance, without notice of a mesne incumbrance, is paid, as well as the original debt (except in a case of a bankruptcy), on the ground that it may be presumed that the mortgagee or pledgee would not have lent the further sum except on the credit of the mortgage or pledge, and that he who seeks equity must do equity. This presumption may indeed be rebutted by circumstances; but, unless it is rebutted, it will generally prevail in favor of the lien against the pledgor himself, although not against his creditors having a specific lien or interest in the property, or against subsequent purchasers of the equity of redemption.² 603.

A mortgagee whose security exceeds the debt secured, may apply the balance in payment of any unsecured debt due to him from the mortgagor, as against the mortgagor's executors.³ 604.

III. Mortgagor's right to redeem, and mortgagee's right to sell. III. A mortgagor of personal property may redeem, if he applies within a reasonable time. But, on the other hand, the mortgagee may, on due notice, sell the property, instead of proceeding to foreclose.⁴ The reason would appear to be that on which a Court of Equity acts in not decreeing a specific performance of agreements re-

¹ St. § 1030; 2 Sp. 771.

² St. § 1034; 2 Sp. 772, 773.

³ In re Haselfoot's Estate, Chauntler's Claim, L. R. 13 Eq. 327

⁴ St. § 1031; 2 Sp. 637; Carter v. Wake, L. R. 4 Ch. D. 605.

specting personal property ; namely, that other things of the same kind, and of the very same worth, even to the owner himself, may be purchased for the sum which the articles in question fetch ; and therefore if such property is mortgaged, the mortgagee may properly be allowed to sell it, on due notice, without the inconvenience of foreclosure. 605.

IV. If a person transfers his shares in a company by way of mortgage, and the mortgagee, as registered owner, becomes liable for calls or other payments, he cannot compel his mortgagor to indemnify him, unless he comes to redeem.¹ 606.

IV. Mortgage of shares.

V. The mortgagee of a ship is entitled to the accruing freight from the time he takes possession.² A security valid in Equity may be given upon freight to be earned or a cargo to be acquired.³ 607.

V. Mortgage of a ship.

The first registered mortgagee of a ship, by taking possession of her before the freight is completely earned, obtains a legal right to receive the freight, and to retain thereout not only what is due on his first mortgage, but also the amount of any subsequent charge which he may have acquired on the freight, in priority to every equitable charge of which he had no notice ; and it makes no difference that a subsequent incumbrancer was the first to give notice to the charterers of his charge on the freight.⁴ 608.

A legal mortgage of a ship must be in the form

¹ 2 Sp. 774.

² 2 Sp. 775.

³ 2 Sp. 775.

⁴ Liverpool Marine Credit Co. v. Wilson, L. R. 7 Ch. Ap. 507.

described by the Merchant Shipping Act (17 and 18 Vict. c. 104). Prior to the stat. 25 and 26 Vict. c. 63, s. 3, an equitable mortgage was invalid.¹ But by that enactment, "equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property." 609.

VI. In the case of pledges, if a time for redemption is fixed by the contract, still the pledgor may redeem it afterwards, if he applies to the Court within a reasonable time. If no time is specified for the payment, the pledgor may redeem it at any time during his life, unless he is called upon to redeem by the pledgee; and if he fails in so redeeming it, his representatives may redeem it.² 610.

VII. Pledgee's rights.

VII. On the other hand, the pledgee, on giving due notice, may sell the pledge without any decree of sale.³ 611.

In *Carter v. Wake* (L. R. 4 Ch. D. 605), Sir G. Jessel, M. R., held that the pledgee had no right to foreclose. 612.

¹ *Liverpool Borough Bank v. Turner*, 2 D. F. & J. 502.*

² St. § 1032; 2 Sp. 637, 772, 773.

³ St. § 1033; 2 Sp. 637, 771.

* The Act of Congress of July 29th, 1850, requires every conveyance of an American vessel including mortgages to be recorded in the office of the Collector of Customs of the port where such vessel is registered or enrolled. Smith, *Manual Common Law*, Am. ed. (289), note.

SECTION IV.

OF LIENS.

LIENS in Equity are wholly independent of the possession of the property. 613. Equitable lien in general.

If a consignee accepts a consignment, with express directions to apply it or the proceeds of it in a particular mode, he cannot set up his general lien in opposition to those directions. In such a case only what remains after answering the particular directions, can become subject to the general lien.¹ 614. General lien of a consignee.

The usual way of enforcing a lien in Equity is by a sale of the property to which it is attached.² 615.

The lien of a solicitor on the deeds, books, and papers of his client, for his costs, is not like a lien arising in the case of contract; it has not the character of a pledge or a mortgage; but it is merely a right to withhold the deeds, books, and papers, which have come into his possession as solicitor, and not a right to enforce his claim against the client. It prevails as against the representatives of the client, but it is only commensurate with the right of the client, and is subject to the rights of third persons as against him; so that a prior incumbrancer cannot be affected by it; and when a mortgagee is paid Lien of a solicitor for costs.

¹ Frith v. Forbes, 4 D. F. & J. 409.

² St. § 1217.

off, the solicitor of the mortgagee cannot retain the deeds.¹ And a solicitor acting both for the mortgagee and the mortgagor, in the preparation of a mortgage, has no lien on the title-deeds in his possession for costs due to him from the mortgagor, unless such lien is expressly reserved, even though the mortgagee may have known that the solicitor had such lien as against the mortgagor.² 616.

But a solicitor has a lien upon a fund realized in a suit, as to so much as may belong to his own client, for his costs of the suit or immediately connected with it; and this is a lien which he may actively enforce.³ 617.

Lien of a joint tenant; If one of two joint tenants of a lease renews for the benefit of both, he will have a lien on the moiety of the other joint tenant for a moiety of the fines and expenses.⁴ 618.

of a trustee; A trustee is entitled to a lien on the trust estate for his expenses.⁵ 619.

of annuitants. Annuitants scheduled to a trust deed do not acquire any lien upon the trust estate, unless they are made parties to the deed.⁶ 620.

¹ 2 Sp. 800, 801; *Francis v. Francis*, 5 D. M. & G. 108; *Turner v. Letts*, 7 D. M. & G. 243; see also *Watson v. Lyon*, Id. 288; and *In re Bank of Hindustan, etc.*, *Ex parte Smith*, L. R. 3 Ch. Ap. 125; *In re Faithful*, L. R. 6 Eq. 325.*

² *In re Snell*, L. R. 6 Ch. D. 105.

³ 2 Sp. 802; *Verity v. Wylde*, 4 Drew. 427; *Haymes v. Cooper*, 33 Beav. 431.

⁴ 2 Sp. 803.

⁵ 2 Sp. 803.

⁶ 2 Sp. 104.

* See also *Stewart v. Flowers*, 44 Miss. 513; *In re Paschal*, 10 Wall. 483.

Where a testator gives a legacy to each of ^{Legatees,} his daughters, on condition that she shall ^{lien.} convey her share of certain real estate, to which the daughters were entitled, to the sons of the testator to whom he gives his residuary personal estate, and the daughters convey their shares of the real estate to their brothers, but do not obtain payment of their legacies, it has been held that the daughters are not entitled to any lien on the real estate for their legacies, but have a mere personal remedy.¹ 621.

¹ *Barker v. Barker*, L. R. 10 Eq. 438.

CHAPTER IV.

OF APPORTIONMENT AND CONTRIBUTION.

I. Jurisdiction. I. In several cases under these heads, assistance may be had at Law. But even in these cases it may be necessary to resort to Equity, instead of proceeding at Law, in order to avoid a multiplicity of suits; for where there are several parties, as each is only liable to contribute for his own portion, separate actions and verdicts are necessary against each.¹ 622.

II. Two classes of apportionment. II. An apportionment may be made, either of a benefit, or of an incumbrance, loss, expense, or liability; and in the case of an apportionment of the latter class, a corresponding contribution is enforced, consequent on such an apportionment. 623.

Illustrations of the first. To mention an instance of an apportionment of a benefit, if an apprentice-fee is given, and the master afterwards becomes bankrupt, Equity will decree an apportionment.² And where portions are payable to daughters at a certain age or on marriage, and maintenance is to be allowed, payable half-yearly, at specific times, until the portions are due, if one of the daughters should attain the given age at an intermediate period, the maintenance will be apportioned in Equity.³ 624.

¹ St. § 477, 478. ² St. § 472, 473. ³ St. § 479; 2 Sp. 462.

On the other hand, with regard to an apportionment of, and contribution towards, an incumbrance, loss, expense, or liability, in the absence of an indication to the contrary, where several estates or parts of estates are comprised in one mortgage, and they become vested by devise, descent, or otherwise, in several persons, each estate or part of an estate mortgaged must, according to its value, contribute proportionally to keep down the interest or to pay off the principal.¹ And so it is with different persons having distinct limited interests in an estate which is under mortgage.² And as between a tenant for life and a remainder-man under a will, the interest on the testator's debts must be borne by the income as from the day of the testator's death.³ 625.

Illustrations of apportionments of the second class.

III. If a tenant in tail in possession pays off an incumbrance on the estate, it will ordinarily be treated as extinguished, and the remainderman cannot be called upon for a contribution, unless the tenant in tail keeps alive the incumbrance by some suitable assignment or otherwise manifests his intention to hold himself out as a creditor of the estate in lieu of the mortgagee; because a tenant in tail in possession can make himself absolute owner of the estate; and, therefore, if he discharges incumbrances, he is presumed to do so in the character of owner, unless he clearly shows that he intends to become a creditor in respect of such discharge. But the like doctrine does not apply to a

III. Voluntary discharge of an incumbrance by a tenant in tail or by a tenant for life.

¹ St. § 484.

² St. § 485; 2 Sp. 837.

³ Barnes v. Bond, 32 Beav. 653.

tenant in tail in remainder, whose estate may be altogether defeated, or to a tenant for life; for, if either of these persons, and especially a tenant for life, pays off an incumbrance, it must be presumed that he means to keep it alive, against the inheritance for his benefit. But, in both of these cases, the presumption may be rebutted by circumstances which demonstrate a contrary intention. And if a tenant for life pays off a bond debt, it will not be presumed that he meant to keep it alive.¹ 626.

IV. With respect to the compulsory discharge of incumbrances, the modern rule is this: that the tenant for life shall contribute, beyond the interest, in proportion to the benefit he derives from the liquidation of the debts, and the consequent cessation of interest, which of course will much depend on his age, and the computation of the value of his life. If the estate is sold to discharge incumbrances (as the incumbrancer may insist that it shall), the surplus which remains after discharging the incumbrance is to be applied as follows: the income thereof is to go to the tenant for life during his life; and then the whole capital is to be paid over to the remainderman or reversioner.² 627.

V. A tenant for life is bound to keep down interest which has accrued during his own time, so far as the rents and profits will extend. But if there are any arrears which

¹ Morley v. Morley, 5 D. M. & G. 610; St. § 486; 2 Sp. 308, 344, 345, 843.

² St. § 487; 2 Sp. 551, 841.

accrued during the life of a preceding tenant for life, and such arrears cannot be recovered from his estate, they are primarily a charge upon the inheritance.¹ 628.

Where a tenant for life of an estate, subject to a charge bearing interest, pays the interest, although the rents and profits are insufficient for that purpose, he cannot make himself an incumbrancer on the estate for the excess in his payments, if he has not given to the remainderman any intimation of the insufficiency of the rents and profits, and of his intention to charge the excess of his payments on the inheritance.² 629..

A tenant in tail in possession, if of full age, cannot be compelled by the remainderman or reversioner to pay the interest; because he can make himself absolute owner of the estate; and even if the remainderman or reversioner ultimately takes, still, instead of having any just ground of complaint that the interest has not been kept down, he has cause to be grateful to the tenant in tail for not barring the remainder or reversion. If, however, such a tenant in tail does pay the interest, his personal representatives have no right to be allowed the sum so paid, as a charge on the estate; because he is supposed to have kept down the interest, as owner, for the benefit of the estate.³ 630.

If a tenant in tail is an infant, his guardian or trustee will be required to keep down the interest;

¹ St. § 488, 1028 a; 2 Sp. 551; *Dixon v. Peacock*, 3 Drew. 288, 292; *Sharshaw v. Gibbs*, Kay, 333; *Tudor's Lead. Cas. on R. P.*, 2d ed. 82, *et seq.*

² *Lord Kensington v. Bouverie*, 7 H. L. Cas. 557.

³ St. § 488.

because the infant cannot of his own free will bar the remainder or reversion.¹ 631.

VI. Charges
of renewal
of lease-
holds.

VI. Where leaseholds for years or for lives are settled upon several persons in succession, the rule, in the absence of any express direction, is, to apportion the charges for the renewal of leaseholds between the tenant for life and the remainderman, in proportion to the enjoyment they have of the renewed lease.² 632.

VII. Contri-
bution
between
sureties.

VII. Another case of apportionment and contribution arises in regard to sureties. Originally, it seems to have been questioned whether contribution between sureties, unless founded on some positive contract between them, could be enforced at Law. And although there is now no doubt that it may, yet the legal jurisdiction now assumed in no way affects that which belongs to Equity.³ The contribution thus enforced is not grounded on mutual contract, express or implied, but on principles of natural justice.⁴ 633.

Jurisdic-
tion.

Where such
contribu-
tion is
enforced.

If one surety, on the default of the principal, is compelled to pay the whole sum of money, or to perform any other obligation for which all become bound, he can oblige each of his co-sureties, and the representatives of any deceased surety, to contribute, whether the sureties are jointly and severally bound, or only severally, unless there is

¹ St. § 488, note.

² 2 Sp. 545, 546.

³ St. § 495, 496; *Dering v. Earl of Winchelsea*, 1 Lead. Cas. Eq., 2d ed. 78, *et seq.*

St. § 493.

an express or implied contract to the contrary, and whether their suretyship arises under the same instrument or under different instruments, either executed with his knowledge or not, if all the instruments are primary concurrent securities for the same debt.¹ But if the instrument is intended to be only subsidiary to and a security for the other in case of a default in payment, and not to be a primary concurrent security, the surety in the subsequent bond would not be compelled to aid those in the other by any contribution.² 634.

The contribution will generally be equal ; ^{What is the} but if there is a contract express or implied ^{quantum.} to the contrary, it will be otherwise.³ And if there are several sureties, and one of them is insolvent, and another pays the debt, he can recover from the solvent surety or sureties, as much as such solvent surety or sureties would have had to pay if the insolvent had never undertaken the office of surety.⁴ And when there are several distinct bonds, with different penalties, and a surety on one bond pays the whole, the contribution is in proportion to the penalty of their respective bonds.⁵ 635.

¹ See St. § 492, 495, 497, 498 ; 2 Sp. 843 ; *Whiting v. Burke*, L. R. 10 Eq. 539 ; 6 Ch. Ap. 342.*

² St. § 498 ; 2 Sp. 844.

³ St. § 498 ; 2 Sp. 844.

⁴ St. § 496 ; 2 Sp. 844 ; *Hitchman v. Stewart*, 3 Drew. 271.

⁵ St. § 497.

* In some of the American States, Courts of Law now follow the rule adopted in Courts of Equity, in apportioning the share of an insolvent surety upon those who remain solvent. St. Eq. Jur. § 496 a, and cases cited.

VIII. General average. VIII. Another instance of apportionment and contribution is that of general average, which is a general contribution that is to be made by all parties in interest toward a loss or expense, which, in the course of a voyage, is voluntarily sustained or incurred for the benefit of all; as where goods are thrown overboard to lighten the ship. The contribution is confined to the property saved thereby, including the ship, the freight, and the cargo.¹ 636.

¹ St. § 490, 491; *Berkley v. Presgrave*, Tudor's Lead. Cas. Merc. Law, 2d ed. 83, *et seq.**

* Abbott on Shipping, pt. 3, ch. 8, § 17.

CHAPTER V.

OF PARTNERSHIP.

I. COURTS OF EQUITY exercise a full concurrent jurisdiction with Courts of Law in all matters of partnership; and indeed, practically speaking, they exercise an exclusive jurisdiction over the subject in all cases of any complication or difficulty.¹ 637.

I. Jurisdiction.

II. In general a Court of Equity will not enforce a specific performance of a contract to enter into a partnership which may be dissolved instantly at the will of either party, since that would ordinarily be useless. Nor will it ordinarily decree a specific execution of an agreement to enter into a partnership for a certain time.² But after a partnership has commenced, the Court will carry into effect the articles of partnership, unless there is an entirely adequate remedy at Law. An exception, however, occurs, where there is an agreement, that, in case of any dispute, the same shall

II. Specific performance of an agreement to enter into partnership.

Carrying into effect the articles of partnership where a partnership has commenced.

¹ St. § 683. See, on this subject, *Crawshay v. Maule*, and *Walters v. Taylor*, *Tudor's Lead. Cas. Merc. Law*, 2d ed. 310, 329, *et seq.*

² St. § 666; *Scott v. Rayment*, *L. R. 7 Eq.* 112.

be referred to arbitration; for Courts of Equity will not enforce such an agreement, but will leave the parties to their own pleasure.¹ 638.

Application
of articles
after ceasing
of term.

Where partners, after the expiration of the time fixed by the articles for the duration of the partnership, continue to carry on business without altering the terms, it will be deemed a partnership at will, regulated by the articles so far only as they are consistent with a partnership at will.² 639.

III. Dissolu-
tion
decreed.

III. A partnership may be dissolved, in the ordinary way, by death; by the act of the parties; by effluxion of time; and in other ways.³ But Courts of Equity will dissolve the partnership before the regular time, in case, by reason of the ill-feeling between the partners or other circumstances, it is impracticable to carry on the undertaking at all, or at least according to the stipulations of the articles, or beneficially; or in case of the insanity, permanent incapacity, or gross misconduct of one of the partners.⁴ And a partnership will also be dissolved at the instance of a partner who was induced to enter into it on a false representation.⁵ 640.

¹ St. § 667, 670.

² *Clark v. Leach*, 32 Beav. 14.

³ See *Smith's Manual of Com. Law*, Am. ed. 207.

⁴ St. § 673; *Harrison v. Tennant*, 21 Beav. 482; *Jennings v. Baddeley*, 3 K. & J. 78; *Baxter v. West*, 1 Dr. & Sm. 173; *Watney v. Wells*, 30 Beav. 56; *Essell v. Hayward*, 30 Beav. 158; *Rowlands v. Evans*, 30 Beav. 302; *Leary v. Shout*, 33 Beav. 582.*

⁵ *Rawlins v. Wickham*, 1 Gif. 355.

* *Slemmer's Appeal*, 58 Penn. St. 168.

IV. On the other hand, in the case of a partnership existing during the pleasure of the parties, with no time fixed for its renunciation, Equity will grant an injunction against a dissolution, if a sudden dissolution is about to be made in ill faith, and would work irreparable injury.¹ 641.

IV. Dissolution prohibited.

V. An injunction will be granted to prevent a partner from doing acts injurious to the partnership.² 642.

V. Injury prevented.

VI. Where a dissolution has taken place, not only will an account be decreed, but, if necessary, a manager or receiver will be appointed to close the business, and make sale of the property.³ But a Court of Equity is not inclined to decree an account, except under special circumstances, if there is no actual or contemplated dissolution, so that all the affairs of the partnership may be wound up.⁴ 643.

VI. Account and manager or receiver.

VII. On a dissolution, one of the co-owners of leaseholds cannot insist on a partition, but the whole must be sold.⁵ 644.

VII. Partition.

VIII. A partner using any portion of the partnership stock, after a dissolution, for any purpose other than for the winding up of the concern, will be treated as a trustee for the others, or their representatives, of the profits he may have made thereby.⁶ 645.

VIII. Using stock after dissolution.

¹ St. § 668; Lindley, 179.

² St. § 669.

³ St. § 672.

⁴ St. § 671.

⁵ Wild v. Milne, 26 Beav. 504.

⁶ 2 Sp. 208.*

* Smith, Manual Com. Law, Am. ed. [201], and note.

Interest
after dis-
solution. After a dissolution, no interest is payable between partners merely on the ground that they have still remaining in the concern unequal shares of capital, on which during the continuance of the partnership they were entitled, either by express agreement or by their course of dealing, to have interest credited, with or without rests.¹ 646.

IX. Real estate. IX. Real estate bought and held for the purposes of a partnership in trade, as a part of the stock in trade, will be considered in Equity, although not at Law, as personal estate to all intents and purposes, whatever may be the form of the conveyance; so as to be subject to all the equitable rights and liabilities of the partners and their creditors; and so as to pass to the personal representatives and distributees, on the death of a partner, except, perhaps, where there is a clear expression of the deceased partner that it shall go to his heir-at-law beneficially, or the partners have stipulated that freehold lands purchased by them shall descend to their heirs-at-law beneficially.² But where the land, and not the trade, is the principal object, and the trade is merely ancillary to the beneficial enjoyment of the land, or a part of it,

¹ *Barfield v. Loughborough*, L. R. 8 Ch. Ap. 1.

² *Smith's Merc. Law*, 6th ed. 179; St. § 674; *Darby v. Darby*, 3 Drew. 495; but see 2 Sp. 208-211.*

* *Adams's Eq.* [245], [246], and note. But, except so far as required to pay firm debts or balances due partners, partnership land retains the quality of real estate as to descent, dower, etc. *Shearer v. Shearer*, 98 Mass. 107; *Wilcox v. Wilcox*, 13 Allen, 252.

this doctrine will not apply ; so that if one of the co-owners dies intestate, his share in the land will pass to his heir, and not to his legal personal representative.¹ 647.

X. During the partnership, the joint creditors have no lien, until they have obtained a judgment; and before they have issued and registered process of execution, they cannot prevent the partners from effectually transferring the property by a *bonâ fide* alienation.² 648.

X. Rights
of joint
creditors

XI. The creditors of the partnership have a right to the payment of their debts out of the partnership funds, before the private creditors of either of the partners; although, at Law, this is generally disregarded. On the other hand, the separate creditors of each partner are entitled to be first paid out of the separate effects of their debtor, before the partnership creditors can claim anything; although, at Law, a joint creditor may proceed directly against the separate estate.³ 649.

XI. Priority
as between
joint and
separate
creditors.

XII. The partnership creditors may in the first instance proceed against the executors or administrators of a deceased partner, leaving them to their remedy over against

XII. Creditors may
proceed
against a
deceased
partner's

¹ Steward v. Blakeway, L. R. 6 Eq. 479; 4 Ch. Ap. 603.

² See 2 Sp. 212; stat. 23 and 24 Vict. c. 38, s. 1.

³ St. § 675; 2 Sp. 213; Ex parte Ruffin, and Ex parte Rowlandson, Tudor's Lead. Cas. Merc. Law, 2d ed. 387, 407; Lodge v. Prichard, 4 Gif. 294; 1 D. J. & S. 610.*

* Murrill v. Neill, 8 How. Sup. Ct. 414.

estate in
the first
instance.

the surviving partner, or *vice versa*; because every joint debt is joint and several.¹ 650.

Similar rule
applies to
other joint
debtors.

A similar rule applies to all cases where there is a joint loan to several persons who are not partners.² 651.

¹ St. § 676; 2 Sp. 213.

² St. § 676.

CHAPTER VI.

OF CERTAIN SPECIAL ADJUSTMENTS IN THE CASE OF
DEBTORS AND CREDITORS.

SECTION I.

OF THE MARSHALLING OF SECURITIES.

WE have already had occasion to consider the marshalling of assets in cases of Administration, to which the present topic bears a close analogy. The general doctrine is that if a creditor has a lien on or interest in two funds belonging to one person, and another creditor has a lien on or interest in one only of the funds, and the claims of both could not be satisfied if the former were to resort to the fund in which alone the latter is interested; there the latter creditor can, in Equity, compel the former to resort to the other fund in the first instance for satisfaction, unless that would operate to the prejudice of the party entitled to the double fund or the common debtor.¹ 652.

¹ St. § 633, 642; 2 Sp. 834; 2 Lead. Cas. Eq., 2d ed. 79, *et seq.**

* See also American notes (for the doctrine prevailing in the different States), *Aldrich v. Cooper*, 2 White & Tudor's Lead. Cas. Eq. 255, *et seq.*

No marshalling where one of two joint debtors is also a several debtor of another creditor.

But although the different securities of one and the same common debtor will be marshalled so as to satisfy the different creditors, yet where two or more persons are under a joint obligation to one creditor, and one of them is also indebted to another creditor, Equity will not compel the joint creditor to satisfy his claim by proceeding against the joint debtor who is only indebted to such joint creditor, so as to leave the other joint debtor's property for the several creditor; unless it appears that the joint debt ought in fact to be paid by the debtor who is only indebted to the joint creditor, or that there is some other supervening equity.¹ For, in general, it would seem that the several creditor can have no equity to counterbalance the right of the debtor who is only jointly indebted to the joint creditor, to have a contribution from the other joint debtor. 653.

SECTION II.

OF THE MUTUAL RIGHT TO THE BENEFIT OF SECURITIES BETWEEN A CREDITOR AND SURETIES; AND OF THE RELEASE OF SURETIES.

SURETIES are entitled to the benefit of all securities which have been taken by any of their co-sureties to indemnify themselves against their liability.² 654.

Courts of Equity have also held that on payment by the sureties to the creditor of the debt due from the

¹ St. § 642-5.

² St. § 499.

principal, they are entitled to the full benefit of all securities taken by the creditor, at or after the date of the contracts of suretyship, whether the surety has notice of them or not, and whether of a legal or of an equitable nature, which are collateral to or other than the original principal security whereby the debt is evidenced, or which continue to exist, and do not get back, on payment, to the principal debtor. And the surety is so entitled, not only against the principal debtor, but also against all persons claiming under him; as, for instance, against a subsequent mortgagee of the debtor, with notice of a prior charge paid off by the surety. Thus, if at the time when the bond of the principal and surety is given, a mortgage is made by the principal, to be an additional security for the debt; there, if the surety pays the debt, he will be entitled to an assignment of the mortgage, and to stand in the place of the mortgagee; and as the mortgagor cannot get back his estate without a reconveyance, the assignment and security will remain an effectual security in favor of the surety. But, until recently, the surety could not obtain an assignment of the bond itself; nor could he insist on an assignment of a judgment, after he had paid off the debt on the judgment.¹ It is enacted, however, by the stat. 19

¹ St. § 499, 499 b, 499 c, and note, 638; *Pearl v. Deacon*, 24 Beav. 186; 1 D. & J. 461: *Pledge v. Buss*, Johns. 663, and remarks there on *Newton v. Chorlton*, 10 Hare, 646; *Goddard v. White*, 2 Gif. 449; *Drew v. Lockett*, 32 Beav. 499; *Strange v. Fooks*, 4 Gif. 408.*

* *Hull v. Sherwood*, 59 Mo. 172; *Holmes v. Day*, 108 Mass. 103.

and 20 Vict. c. 99, s. 5, that "every person who, being a surety for the debt or duty of another, or being liable with another for any debt or duty, shall pay such debt, or perform such duty, shall be entitled to have assigned to him, or to a trustee for him, every judgment, specialty, or other security which shall be held by the creditor, in respect of such debt or duty, whether such judgment, specialty, or other security shall or shall not be deemed at Law to have been satisfied by the payment of the debt or performance of the duty; and such person shall be entitled to stand in the place of the creditor," etc.¹ 655.

On the other hand, if a surety has a counter bond or security from the principal, the creditor will be entitled to the benefit of it, and may in Equity reach such security to satisfy his debt.² 656.

In Equity, whatever act is a discharge of the principal, is also a discharge of the surety, though the surety be not released at Law.³ 657.

Where a person becomes a surety upon the faith of another also agreeing to enter into the obligation, the former has a right to be relieved in Equity, on the ground that the instrument has not been executed by the latter.⁴ 658.

¹ 1 Lead. Cas. Eq., 2d ed. 87-91.

² St. § 502, 638.

³ 1 Pres. Shep. T. 71; *Webb v. Hewitt*, 3 K. & J. 438.

⁴ *Evans v. Bremridge*, 8 D. M. & G. 100.

SECTION III.

OF SET-OFF OR COUNTER-CLAIM.

It is not proposed to go into this subject, regarded as a matter of practice or procedure depending on Statutes or Orders; but simply to notice a few points relating to it, when viewed as a matter of Equity Jurisprudence, before the Judicature Acts, by which the relative remedies of persons having counter-claims are materially affected. 659.

As to connected accounts of debts and credits, the balance only was recoverable, whether at Law or in Equity.¹ 660.

Connected
accounts.

But it would seem that Courts of Equity, in virtue of their general jurisdiction, were accustomed to grant relief in all cases where there was a mutual credit between the parties, founded at the time on the existence of some debt due by the crediting party to the other,² or where peculiar equities intervened.³ And where there were cross demands, of such a nature that, if both were recoverable at Law, they would be the subject of a set-off, if either of the demands was a matter of equitable jurisdiction, the set-off would be enforced in Equity.⁴ But a set-off was ordinarily allowed in Equity in those cases only

Independ-
ent debts
or demands.

¹ St. § 1434.

² St. § 1435; *Cavendish v. Geaves*, 24 Beav. 163.

³ St. § 1437 a.

⁴ St. § 1436 a.

where the party seeking the benefit of it could show some equitable ground for being protected against the demand of the other party. The mere existence of cross demands would not be sufficient. *A fortiori*, a Court of Equity would not interfere, on the ground of an equitable set-off, to prevent a person from recovering a sum awarded to him for damages for a breach of contract, merely because there is an unsettled account between him and the other party in respect to dealings arising out of the same contract, where it could not be assumed that the balance would be found to be in favor of the latter.¹ 661.

Where one debt is joint and the other separate. Equity, following the Law, would not allow a set-off of a joint debt against a separate debt, or of a separate debt against a joint debt; unless there was a joint credit given on account of the separate debt, or there were other special circumstances to justify such an interposition.² 662.

Demands in different rights. Except under special circumstances, Courts of Equity have never allowed cross demands existing in different rights to be set the one against the other. And therefore an executor and the trustee of a legacy, who is also the residuary legatee, and had become a creditor of a person who was the

¹ St. § 1436, and note; and see *Phipps v. Child*, 3 Drew. 709; *Fisher v. Baldwin*, 11 Hare, 352; *Jenner v. Morris*, 1 Dr. & Sm. 334; *Smee v. Baines*, 29 Beav. 661.*

² St. § 1437; *Piercy v. Fynney*, L. R. 12 Eq. 69.

* *Green v. Darling*, 5 Mason, 212; *Hendrickson v. Hinckley*, 17 How. Sup. Ct. 447.

husband and administrator of a deceased legatee, was not, in the absence of any special agreement, allowed to set off his debt against the legacy to which the husband, as such administrator, was entitled.¹ And where a creditor of an intestate purchases part of the intestate's goods from his administrator, the creditor cannot set off the sum at which he purchased the goods against a debt due to him from the intestate at the time of his decease.² 663.

¹ *Freeman v. Lomas*, 9 Hare, 109; *Middleton v. Pollock*, L. R. 20 Eq. 29, 515.

² *Lambarde v. Older*, 17 Beav. 542.

CHAPTER VII.

OF CERTAIN MISCELLANEOUS CASES OF ACCOUNT.

I. Agency. I. It is the duty of an agent to keep regular accounts and vouchers.¹ And if he does not, he will not be allowed the compensation which would otherwise belong to his agency. And if he mixes up his principal's property with his own, he is put to the necessity of showing clearly what part of the property belongs to him; and so far as he is unable to do this, it is treated, both at Law and in Equity, as the property of the principal.² 664.

II. Mesne profits. II. In the ordinary case of mesne profits, where aid was clearly afforded at Law, Courts of Equity will not interpose.³ Wherever relief is given in Equity it will be found that there is some peculiar equitable ground for interference; such as fraud, accident, or mistake, the want of a discovery, some impediment at Law, the existence of a constructive trust, or the necessity of interposing to prevent multiplicity of suits.⁴ 665.

¹ See remarks of Sir John Romilly, M. R., in *Stainton v. The Carron Company*, 24 Beav. 353.

² St. § 468.

³ St. § 511.

⁴ St. § 509-514.

III. In cases of legal waste, relief is ordinarily at Law.¹ If the waste is equitable only, of course a remedy lies in Equity.(a)² 666.

IV. Matters of account also arise in regard to tithes and moduses. Wherever the right to tithe is clearly established, an account is consequent. But if the right is disputed, it must first be established, before an account will be decreed.³ For some years past, however, tithes have been commuted for tithe rent charges, under the stat. 6 and 7 Will. IV, c. 47, and subsequent Acts. 667.

¹ St. § 515-518.

² St. § 515, note.

³ St. § 519.

(a) On this subject, see the Judicature Act, 1873 (36 and 37 Vict. c. 66), s. 25 (3).

CHAPTER VIII.

OF DAMAGES AND COMPENSATION.

I. Old rule
as to dama-
ges or com-
pensation
to a plain-
tiff.

I. It would seem that prior to the stat. 21 and 22 Vict. c. 27, damages or compensation were decreed in favor of a plaintiff in Equity, only as incident to other relief, sought by the bill and actually granted, or where there was no adequate remedy at Law, or where some peculiar equities intervened.¹ But by that statute (s. 1) it was enacted, that "in all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract, or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract, or agreement, it shall be lawful for the same Court, if it shall think fit, to award damages to the party injured, either in addition to or in substitution for such injunction or specific performance; and such damages may be assessed in such manner as the Court shall direct."² 668.

Stat. 21 and
22 Vict. c.
27.

¹ St. § 724, 798, 799.

² Johnson v. Wyatt, 2 D. J. & S. 18; Middleton v. Greenwood, Id. 142.

II. Compensation is often given to a defendant on the principle that he who seeks equity must do equity. Thus, if a plaintiff in Equity seeks the aid of the Court to enforce his title to land against an innocent person, who has made improvements on it, supposing himself to be the absolute owner thereof, that aid will be given only on the terms that the plaintiff shall make a compensation to such innocent person proportionate to the benefit which will be received from those improvements.¹ 669.

II. Compensation to a defendant.

III. With regard to penalties and forfeitures for breach of conditions and covenants, there was originally no relief but in Equity; and although, by several statutes, relief may now be had at Law in a great variety of cases, yet the original jurisdiction in Equity still remains.² 670.

III. Jurisdiction to relieve against penalties and forfeitures.

Where a penalty or forfeiture appears to have been inserted merely to secure the performance of some act, or the enjoyment of some right or benefit, Equity regards the performance of such act, or the enjoyment of such right or benefit, as the substantial object of the party interested therein; and if a compensation can be made for the non-performance or want of enjoyment thereof, it will relieve

Where such relief is afforded.

¹ St. § 799 a.*

² St. § 1301; *Peachy v. Duke of Somerset*, 2 Lead. Cas. Eq., 2d ed. 895, *et seq.*

* Statutes in favor of occupying claimants who have made improvements in good faith, are now in existence in most of the States. St. Eq. Jur. § 799 a, note.

against the penalty or forfeiture, by simply decreeing a compensation in lieu of the same, proportionate to the damage really sustained.¹ 671.

Amount of
compensa-
tion in such
cases.

If a compensation can be made, and the penalty is to secure the mere payment of a sum of money, the party will be relieved on paying the principal and interest. If it is to secure the performance of some other act, the Court will ascertain the amount of damages, and grant relief on payment thereof.² 672.

Such relief
is justly
granted.

Although it may be urged that, in such cases as these, it was the folly of the party to make such a stipulation, yet the folly of one man cannot authorize the other to commit an act of gross oppression, or oblige the former to suffer a loss wholly disproportionate to the injury received.³ And, although, in some cases, from peculiar circumstances, which cannot be taken into account, the compensation awarded may not amount to an adequate compensation, yet that is no solid objection against the interference of Courts of Equity; for a great injury is always prevented by such interference; whereas the mischief caused thereby is only occasional; and all general rules must work occasional mischiefs.⁴ 673.

A stipulation, that if instalments be not punctually paid, the whole sum shall be payable at once, is not to be deemed of the nature of a penalty.⁵ Nor is a

¹ See St. § 1314, 1320.

² St. § 1314.

³ St. § 1316.

⁴ St. § 1316, note.

⁵ *Sterne v. Beck*, 1 D. J. & S. 595.*

* St. Eq. Jur. § 1314, note. So also reasonable fines of a building society will not be relieved against in Equity, and are not

reservation of a right to have full payment of money actually due at the date of an existing contract, if there should be a failure to pay a smaller sum on a day certain.¹ 674.—

IV. Courts of Equity will not relieve in cases of liquidated damages, which occur where the parties have agreed that in case one party shall do or omit a certain act, the other party shall receive a certain sum, as the just amount of the damage sustained by such act or omission, and where the sum so agreed to be paid is not grossly disproportionate to the nature or extent of the injury. If the sum is so disproportionate, and it is in reality penal, although it may assume the disguise of liquidated damages, a Court of Equity will treat it as a penalty, and relieve against it accordingly.² 675.

IV. No relief against liquidated damages, where they are really such.

V. In the case of a breach of a covenant to pay rent, Equity will relieve, even where the term is gone at Law by reason of the landlord's entry by virtue of a clause of re-entry; for that is deemed to be a mere security for the payment of the rent.³ But no relief will be granted in Equity in case of forfeiture for the breach of any covenant other than a covenant to pay rent, unless on the ground of accident, mistake, or

V. Where relief is granted as to a breach of covenant or condition.

¹ *Thompson v. Hudson*, L. R. 4 H. L. 1.

² St. § 1318.

³ St. § 1315, and note to § 1323.

within the rule that Equity will not aid to enforce a penalty. *Shannon v. Howard*, etc., Ass'n., 36 Md. 383.

fraud; for it has been considered that even where the damages are capable of being ascertained, the jurisdiction of Equity in giving relief is a dangerous jurisdiction, and rarely works a real compensation.¹(a) 676.

VI. Relief
not granted
against
statutory
penalties or
forfeitures.

VI. And Equity will not mitigate any penalty or a forfeiture imposed by Statute; for that would be in contravention of the direct expression of the legislative will.² 677.

VII. A
penalty or
forfeiture
never en-
forced.

VII. On the other hand, it is a uniform rule in Equity never to enforce either a penalty or a forfeiture. Therefore Courts of Equity will never aid in the divesting of an estate, for a breach of a covenant, on a condition subsequent.³ 678.

¹ St. § 1320-6; *Gregory v. Wilson*, 9 Hare, 689. The marginal note, as to "accidental" neglect, appears to be wrong.

² St. § 1326.

³ St. § 1319; and on the subject of enforcing a penalty, see *Thompson v. Hudson*, L. R. 2 Eq. 612; 2 Ch. Ap. 255; 4 H. L. 1.*

(a) See the stat. 22 and 23 Vict. c. 35, ss. 4-6, and 23 and 24 Vict. c. 126, s. 2, as to relief against forfeiture for breach of a covenant or condition to insure.

* St. Eq. Jur. § 1314, note; *Powell v. Redfield*, 4 Blatch. C. C. 45. Equity follows and enforces the Law, and does not contradict and contravene an express rule of Law or Statute. St. Eq. Jur. § 1326 a, note.

CHAPTER IX.

OF ELECTION.

ELECTION is the choosing between two rights, by a person who derives one of them under an instrument in which a clear intention appears that he should not enjoy both. 679.

Definition.

The instances in which Courts of Law have put a person to his election, are cases of title which are technically incapable of simultaneous assertion, by reason of their inconsistency; as in the case of a contemporaneous estate for life and in tail in the same land, or a claim of a tenant under and against his landlord; or a claim to dower both in the land taken and in the land given in exchange. 680.

Where election arises at Law.

The doctrine of election arises in Equity, in cases where a grantor, or, more commonly, a testator, gives away, either knowingly, or by mistake, that in which he has no interest, or the whole of that in which another person besides himself has an interest, and in the same instrument makes a gift to the owner of the property so given away, or to the person entitled to such interest. In such cases the owner of such property, or the person entitled to such

Where election arises in Equity.

interest, cannot both take the gift and retain his own property or interest; but if he takes the gift, he must resign his own property or interest. On the other hand, if he elects to hold his own property or interest, or, as the phrase is, if he elects against the instrument, he cannot have the gift; or at least he cannot have the entire gift without compensating the party whom he has disappointed by electing to take his own property. Equity, in not suffering the disposition by which such gift is made to inure to the benefit of the person so electing against the instrument, will not render that disposition inoperative, but will make it the means of effectuating that intention of the author of the instrument which such person has frustrated by so electing to retain his own property or interest; for Equity will treat such gift, or at least a part of it, as a trust in the donee or devisee, the person so electing, for the benefit of the party disappointed by such person's refusing to give up his own property or interest.¹ Indeed, the doctrine of election can never be applied where an

¹ See St. § 1077, note, and 1081-4, 1086, 1088, 1089, 1093; 2 Sp. 586, 587, 588, 601-4; *Noys v. Mordaunt*, and *Streatfield v. Streatfield*, 1 Lead. Cas. Eq., 2d ed. 271, *et seq.*; *Swan v. Holmes*, 19 Beav. 471; *Wintour v. Clifton*, 21 Beav. 447; 8 D. M. & G. 641; *Stephens v. Stephens*, 3 Drew. 697; *Usticke v. Peters*, 4 K. & J. 437; *Anderson v. Abbott*, 23 Beav. 457; *Grosvenor v. Durs-ton*, 25 Beav. 97; *Fitzsimons v. Fitzsimons*, 28 Beav. 417; *Hony-wood v. Forster* (No. 2), 30 Beav. 14; *Howells v. Jenkins*, 2 Johns. & H. 706; 1 D. J. & S. 617; *Whitley v. Whitley*, 31 Beav. 173; *Miller v. Thurgood*, 33 Beav. 496; *Grissel v. Swinhoe*, L. R. 7 Eq. 291; *Countts v. Acworth*, L. R. 9 Eq. 519; *Cooper v. Cooper*, L. R. 6 Ch. Ap. 15; *Wilkinson v. Dent*, L. R. 6 Ch. Ap. 339;

election is made contrary to the instrument, unless the interest that would pass by it is of that freely disposable nature that it can be laid hold of to compensate the party who suffers by the exercise of such election against the instrument. Thus, where there is a fund subject to the appointment of a father amongst his children, and the father appoints a part to some of his children, and the other part to persons not objects of the power; any child who is an appointee may both take his appointed share and also claim his share of the improperly appointed portion, as in default of appointment. And an appointee, who is also a legatee, is not bound to elect between his legacy and giving effect to a trust ingrafted on the appointment in favor of persons not objects of the power, but such trust is void. But if there is a power to appoint to two, and the donee of the power appoints to one only and gives

Middleton v. Windross, L. R. 16 Eq. 212; *Rogers v. Jones*, L. R. 3 Ch. D. 688.*

* The principle of election is recognized in this country, and has been applied under a great variety of circumstances. It rests upon the equitable ground that no man can be permitted to claim inconsistent rights with regard to the same subject, and that one who claims an interest under an instrument is bound to give full effect to that instrument as far as he can; a person cannot accept and reject the same instrument, or, having availed himself of it as to a part, defeat its provisions in any other part; and this applies to deeds, wills, and all other instruments whatsoever. *Streatfield v. Streatfield*, 1 White & Tudor's Lead. Cas. Eq., 4th Am. ed. 376; notes by American ed.; also *Wilbanks v. Wilbanks*, 18 Ill. 19; *Walters v. Howard*, 1 Md. Ch. 112.

a legacy to the other, he cannot claim the legacy and also dispute the validity of the appointment.¹ 681.

Primâ facie, it is not to be supposed, nor must it be proved by extrinsic evidence, that a testator disposes of that which is not his own, so as to raise a case of election. It must appear on the will itself, by plain demonstration or by necessary implication.² 682.

The doctrine of election applies even where, in a will not within the Wills Act, 1 Vict. c. 26, a devise of an estate is made to the testator's heir, and the heir, according to the old rule, takes such estate by descent, and not by purchase, and, by the same will, the testator devises to another person an estate belonging to the heir, over which the testator had no disposing power.³ And the doctrine is equally applied to all interests, whether immediate or remote, vested or contingent, of value or of no value, and whether in real or personal estate.⁴ 683.

The same doctrine of election also arises in cases where it was apparently a testator's intention to dispose of all the property he might have at the time of his death, and the heir, who is a devisee under the will, claims property, which was purchased subsequently to

¹ 2 Sp. 520; *In re Fowler's Trust*, 27 Beav. 362; *Woolridge v. Woolridge*, Johns. 63; *Churchill v. Churchill*, L. R. 5 Eq. 44.

² 2 Sp. 592, 593, 595; *Wintour v. Clifton*, 21 Beav. 447; 8 D. M. & G. 641; *Miller v. Thurgood*, 33 Beav. 496.*

³ St. § 1094; 2 Sp. 589; *Schroder v. Schroder*, Kay, 578; *Hance v. Truwhitt*, 2 Johns. & H. 216.

⁴ St. § 1096; 2 Sp. 588.

the will, and which consequently, under the old law, did not pass by the will, but was intended to pass to another person under the general words of the will.¹ 684.

And where a testator devises all the residue of his real estate situate in any part of the United Kingdom or elsewhere, and he has real estate in Scotland as well as in England, and his heir takes the Scotch lands, by descent, from want of an instrument *inter vivos* from which the testamentary instrument might derive its effect, the heir will be put to his election.² 685.

It has been held that the doctrine of election does not apply to an instrument which was valid at the time of execution as to all the property comprised in it, but was rendered inoperative as to some of the property by subsequent events.³ 686.

According to the preponderance of authority and principle, a person electing against a will does not forfeit the whole of the benefit intended for him, where the value of the gift exceeds that of his own property or interest; but he is only obliged to compensate in value the claimant whom he has disappointed by refusing to give up his own property or interest.⁴ For a Court of Equity interfering to control his legal rights for the purpose of executing the intention of the testator, is justified in its interference so far only as that purpose requires.⁵ 687.

¹ St. § 1094; *Schroder v. Schroder*, Kay, 578.

² *Orrell v. Orrell*, L. R. 6 Ch. Ap. 302.

³ *Blaiklock v. Grindle*, L. R. 7 Eq. 215.

⁴ St. § 1085; 2 Sp. 601-4.

⁵ St. § 1085, note.

Election as
to one
benefit.

A person may decline one benefit given him by a will, such as a legacy charged with a portion, without being precluded from taking another benefit by the same will; unless it is fairly inferable from the nature of the different benefits, that he should either take all or reject all.¹ 688.

Election in
the case of a
settlement.

Election may also arise where a person attempts to claim both under and in opposition to a settlement. It is a rule that a person will not be allowed to take under and against the same instrument.² 689.

Election
need not be
made in ig-
norance of
circum-
stances.

The party is not bound to make an election till all the circumstances are known. And if he should make a choice in ignorance of the real state of the funds, or under a misconception of the extent of the claims on the fund elected by him, it will not be conclusive on him. And he is entitled, in order to make an election, to have a discovery, and all the accounts taken, in order to ascertain the real state of the fund.³ 690.

Election by conduct must be by a person who has positive information as to his rights to the property, and with this knowledge really means to give that property up.⁴ 691.

¹ St. § 1081; see 2 Sp. 591.

² *Anderson v. Abbott*, 23 Beav. 457; *Mosley v. Ward*, 29 Beav. 407; *Brown v. Brown*, L. R. 2 Eq. 485; *Codrington v. Lindsay*, L. R. 8 Ch. Ap. 578, 593; 7 H. L. 854.

³ St. § 1098; 2 Sp. 598; *Wintour v. Clifton*, 21 Beav. 447.

⁴ *Wilson v. Thornbury*, L. R. 10 Ch. Ap. 239.

An election may be presumed from a long acquiescence or from other circumstances.¹ Election presumed.
 Remaining in possession of two estates held under titles not consistent with each other, affords no conclusive proof of the kind.² 692.

The doctrine of election is not of the nature of a positive rule of law which a person is bound to know. And therefore in order to infer an election, it is necessary to show that the person who ought to elect was aware of the doctrine.³ 693.

The doctrine of election is not applied in the case of creditors. They may take the benefit of a devise for payment of debts, and also enforce their legal claim against other funds disposed of by the will; for a creditor claims not as a mere volunteer, but for a valuable consideration, and *ex debito justitiæ*.⁴ 694.

Where a testator gives a much larger property to one child, under the mistaken impression that such child did not take under the testator's marriage settlement, he is not bound to elect between his interest under the settlement and the gift by will.⁵ 695.

¹ St. § 1097; 2 Sp. 598-600; *Worthington v. Wiginton*, 20 Beav. 67.

² *Spread v. Morgan*, 11 H. L. Cas. 588.

³ *Spread v. Morgan*, 11 H. L. Cas. 588.

⁴ St. § 1092; 2 Sp. 592.

⁵ *Box v. Barrett*, L. R. 3 Eq. 244.*

* St. Eq. Jur. § 1086, note.

Disability. Where the person bound to elect labors under any disability, as infancy or coverture, the Court will consider whether it will be most beneficial for such person to take under or against the will or deed, and will decree accordingly.¹ 696.

Persons having separate rights of election as next of kin of a person who died without electing. Where a person, who had a right of election, dies intestate, without having exercised it, each of his or her next of kin has a separate right of election; so that neither the election of the majority nor of the heir or administrator will bind the others.² 697.

¹ 2 Sp. 587.

² Fytche v. Fytche, L. R. 7 Eq. 494.

CHAPTER X.

OF SATISFACTION.

SATISFACTION may be defined to be the making of a donation with the express or implied intention that it shall be taken as an extinguishment of some claim which the donee has upon the donor.¹ 698.

Definition.

Equitable questions of satisfaction usually arise in three classes of cases. 699.

Where satisfaction arises.

I. In case of portions secured by a marriage settlement. 700.

II. In cases of portions given by a will, and an advancement of the donee afterwards in the testator's lifetime. 701.

III. In cases of legacies to creditors.² 702.

In all these classes of cases where the satisfaction is a matter of presumption, that presumption may be rebutted, either by intrinsic evidence derived from the will itself, or by extrinsic evidence, as by declarations of the testator or written papers.³ 703.

Satisfaction resting on presumption may be rebutted.

¹ See St. § 1099, 1101, 1106; *Ex parte Pye*, 2 Lead. Cas. Eq., 2d ed. 303, *et seq.*; *Samuel v. Ward*, 22 Beav. 347; and references *infra*.

² St. § 1109.

³ St. § 1102; 2 Sp. 441-455.

I. As to
portions se-
cured by
settlement.

I. Where a portion or provision is secured to a child by a marriage settlement or otherwise, and the parent or person standing in *loco parentis*—that is, a person meaning to stand in the place of a parent as regards providing for a relation's child—afterwards by will gives the same child a legacy, whether particular or residuary, without expressly declaring it to be in satisfaction of such portion or provision, in such case, if the legacy is substantially the same in its value, in its nature, in time of payment, in certainty, and in benefit, with the portion or provision, and if it is not given for a different purpose, it will, in the absence of evidence to the contrary, be deemed a full satisfaction, as Courts of Equity now incline against double portions. If the legacy is less in amount than the portion or provision, or if it is payable at a different period, then (looking to the weight of authority) it may be deemed a satisfaction *pro tanto*, or in full, according to the circumstances.¹ 704.

In the case of a provision by will, followed by a provision by deed, the first being revocable, there is no difficulty in the way of the second provision taking

¹ St. § 1103, 1104, 1109, 1110; 2 Sp. 427-430, 432, 433, 438-440; *Lady E. Thynne v. Earl of Glengall*, 2 H. L. Cas. 153; *Pinchin v. Simms*, 30 Beav. 119; *Charlton v. West*, 30 Beav. 124; *Coventry v. Chichester*, 2 Hem. & M. 149; 2 D. J. & S. 336; s. c. nom. *Lord Chichester v. Coventry*, L. R. 2 H. L. 71; *Campbell v. Campbell*, L. R. 1 Eq. 383; *McCarogher v. Whieldon*, L. R. 3 Eq. 236; *Paget v. Grenfell*, L. R. 6 Eq. 7.*

* *Langdon v. Astor's Ex'rs.*, 3 Duer. 16 N. Y. 9; *Sims v. Sims*, 2 Stockton Ch. 158; *Roberts v. Weatherford*, 10 Ala. 72.

effect in lieu of the first; and no election on the part of the person to be benefited is required. And if the second provision is construed to be substitutional, it is properly termed an ademption. 705.

On the other hand, in the case of a provision by deed, followed by a provision by will, the first being not revocable, and actual rights being conferred thereby, it is more natural in one respect to regard the second provision as additional rather than as substitutional, and the application of the presumption against double portions is consequently more difficult; and indeed no substitutional effect can be given to the will, except by the election of the person intended to be benefited.¹ 706.

Where by a covenant, to take effect on the death of the settlor, a portion is settled on the husband for life, and then on his wife and children, and an absolute gift of other property is afterwards made by the settlor by will in favor of the husband, it may be a satisfaction of the husband's life interest, under the settlement, but not of the interest of the wife and children.² 707.

II. Where a parent or other person standing *in loco parentis* bequeaths a legacy, whether particular or residuary, to a child to whom he stands in that relation, and then by an act *inter vivos*, makes a provision for the same child, of equal or greater amount, of equal certainty, and substantially the same in kind and in degree of benefit,

II. As to portions left by will to a child.

¹ Lord Chichester v. Coventry, L. R. 2 H. L. 71.

² McCarogher v. Whieldon, L. R. 3 Eq. 236.

without expressing it to be in lieu of the legacy, or for other objects than those for which the legacy was given, in such case, in the absence of evidence to the contrary, it will be deemed a satisfaction or ademption of the legacy. And if the provision *inter vivos* is less than the legacy, it will be deemed an ademption *pro tanto*.¹ 708.

A legacy may be adeemed by a gift, though not made on marriage or any other occasion having a special reference to the donee.² But a bequest to a daughter is not adeemed by a gift to the husband; nor by an advance to her, on her marriage, for her outfit.³ 709.

No ademption of legacies to strangers. And this doctrine of the constructive ademption of legacies has never been applied to legacies to wives or to mere strangers, unless under some peculiar circumstances; as where the legacy is bequeathed for a particular purpose, and a portion is afterwards given by the testator, by an act *inter vivos*, exactly for the same purpose, and for none

¹ St. § 1111, and note, and 1103-1105, 1112, 1113, 1115; 2 Sp. 429, 432-5, 433-440; Hopwood v. Hopwood, 22 Beav. 488; 7 H. L. Cas. 728; Schofield v. Heap, 27 Beav. 93; Beckton v. Barton, 27 Beav. 98; Montefiore v. Guedalla, 1 D. F. & J. 93; Watson v. Watson, 33 Beav. 575; Phillips v. Phillips, 34 Beav. 19; Dawson v. Dawson, L. R. 4 Eq. 504; Nevin v. Drysdale, L. R. 4 Eq. 517; Cooper v. Macdonald, L. R. 16 Eq. 258; Stevenson v. Masson, L. R. 17 Eq. 78.*

² Leighton v. Leighton, L. R. 18 Eq. 458.

³ Ravenscroft v. Jones, 32 Beav. 669.

* Sims v. Sims, 2 Stockton Ch. 156.

other.¹ Indeed, in the case of strangers, the *onus probandi* is upon those who contend that the two provisions are to be considered but as one; whereas in the case of children, the *onus probandi* is on those who contend for the double provision.² The term "strangers" here includes all who are not legitimate children of the donor, or children to whom he has placed himself *in loco parentis*.³ 710.

The ground of the distinction would seem to be, that a legacy by a parent, or by a person *in loco parentis*, is presumed to be intended as a portion, and that it may be fairly regarded as the utmost amount that the testator, from a sense of duty or from parental or quasi parental affection, considered himself able and called upon to spare for the legatee, consistently with the accomplishment of other necessary purposes; and that if he afterwards advances the same amount to the same child, it is almost certain, or at all events most likely, that he did so in accomplishment of the same intention of providing for such child to the same extent; especially where the necessity of making a provision has arisen in his lifetime, as where the provision is made on the marriage of the child. But in the case of a legacy to a stranger, the legacy is a mere arbitrary gift, uncon-

Ground of
the distinction.

¹ St. § 1100, note, 1117, 1118; 2 Sp. 430; *Pankhurst v. Howell*, L. R. 6 Ch. Ap. 136.*

² 2 Sp. 430.

³ St. § 1116; 2 Sp. 429.

* It has been applied to an uncle. *Gills's Estate*, 1 Pars. Eq 139. And to a brother, *Richards v. Humphreys*, 15 Pick. 133.

nected with considerations of duty or parental or quasi parental affection ; and there is as much reason, in such cases, why the testator should choose to make an additional gift, as there was for his making the original gift. 711.

III. A legacy given to a creditor, if it is of an amount equal to or greater than the debt, and in other respects equally beneficial, will, in general, in the absence of all countervailing circumstances, be deemed to be a satisfaction of the debt, on the principle that a testator shall be presumed to be just before he is generous.¹ But this principle has no application to cases where the testator expressly directs his debts to be paid, and his assets are sufficient to pay both debts and legacies. And the Court leans very strongly against holding the legacy to be a satisfaction. Hence the rule is not allowed to prevail where the legacy is of less amount than the debt, even as a satisfaction *pro tanto*, unless the creditor assented, in the debtor's lifetime, to such an arrangement ; nor where there is a difference in the time of payment of the debt and of the legacy ; nor where they are of a different nature, as to the subject-matter, or as to the interest therein ; nor where a particular motive is assigned for the gift ; nor where the debt is contracted subsequently to the will ; nor where the legacy is contingent or uncertain ; nor where the bequest is of a

¹ St. § 1119, 1120 ; 2 Sp. 605-7 ; *Edmunds v. Low*, 3 K. & J. 318 ; *Shadbolt v. Vanderplank*, 29 Beav. 405.*

* See also *Parker v. Coburn*, 10 Allen, 82.

residue; nor where the debt is a negotiable security; nor where the debt is on an open and running account, so that the testator might not know whether he owed anything. And as to a debt strictly so called, there is no difference whether it is a debt due to a stranger or to a wife or a child.¹ 712.

IV. On the other hand, where a creditor leaves a legacy to his debtor, and either takes notice of the debt, or leaves his intention doubtful, Courts of Equity will not deem the legacy as either necessarily or *prima facie* manifesting an intention to release or extinguish the debt; but they will require some evidence, either on the face of the will, or *aliunde*, to establish such an intention.² For, if the legacy is less than the debt, it would clearly be a positive injury to the creditor to construe the legacy a release of the debt; and even if the legacy is more than the debt, it does not follow that because the testator has manifested his bounty towards the debtor in that respect, he intends the debtor to have another benefit which has no necessary connection with the former. Where the testator does not mention the debt, but gives the debtor a legacy of equal or greater amount, he thereby benefits the debtor to at least the same extent, by giving him the means of paying the debt, as

IV. As to legacies to debtors.

¹ St. § 1103, 1122; 2 Sp. 605-8; Jefferies v. Mitchell, 20 Beav. 15; Hassell v. Hawkins, 4 Drew. 468; Cole v. Willard, 25 Beav. 568; Hammond v. Smith, 33 Beav. 452; Fairer v. Park, L. R. 3 Ch. D. 309.*

² St. § 1123.

* Gilliam v. Brown, 43 Miss. 641; Strong v. Williams, 12 Mass. 391.

if he had directly forgiven the debt, but had given the debtor nothing, or nothing but the overplus; and his reason for thus giving the debtor the means of paying the debt, without alluding to the debt, may have been one of kind consideration towards the debtor, namely, in order that none but the executor might be aware of the debt. 713.

V. Annuity. V. Where an annuity to the separate use of a married woman is charged on an estate, the gift of an annuity to her generally, and charged upon property of a different nature, though to the same amount and payable on the same days, is not a satisfaction.¹ And where a person executes a deed by which he gives annuities to certain persons, and then executes another deed by which he gives other annuities to those persons, there is no presumption that the latter were intended to be a substitute for the former, especially where the annuities given by the second deed are of less amount, or the first deed contains a power of revocation which is not exercised by the second deed.²

Covenant to settle lands. So where there is a covenant on marriage to settle specific lands, it will not ordinarily be satisfied by suffering other lands of equal value to descend.³ And an appointment of a sum by will is not a satisfaction of a covenant to bequeath a like sum.⁴ 714.

¹ 2 Sp. 609.

² *Palmer v. Newell*, 20 Beav. 32; 8 D. M. & G. 74.

³ 2 Sp. 610.

⁴ *Graham v. Wickham* (No. 1), 31 Beav. 447; 1 D. J. & S. 474.*

* The general rule is that where legacies are given by different instruments, the presumption is, *prima facie*, that two legacies are

CHAPTER XI.

OF PARTITION; OF SETTLEMENT OF BOUNDARIES;
AND OF ASSIGNMENT OF DOWER.

SECTION I.

OF PARTITION.(a)

THE mode in which a partition is effected, ^{Mode of partition.} is by first ascertaining the rights of the several parties interested, and then issuing a commission to make the partition; and on the return of the commission and confirmation of the return by the Court, the partition is finally completed by mutual conveyances of the lots made to the several parties.¹ For-

¹ St. § 650; and on this subject see *Agar v. Fairfax*, 2 Lead. Cas. Eq., 2d ed. 374, *et seq.**

intended, and that the last is not a mere repetition of the former; nor will the fact that each legacy is for the same amount in money, operate to repel the presumption that they are cumulative, unless there are other circumstances to repel it. St. Eq. Jur. § 1123 a, and note.

(a) See stat. 31 and 32 Vict. c. 40, and 39 and 40 Vict. c. 17, at the end of the book.

* The ground of equitable jurisdiction, as said by Lord Eldon in *Agar v. Fairfax*, arises "in the extreme difficulty attending the process of partition at law; where the plaintiff must prove his title, as he declares, and also the titles of the defendants, and judgment is given for partition according to the respective titles so proved."

merly, if the conveyances could not be executed on account of infancy, or on account of an executory interest, the decree could only put the parties in possession, and secure them in the enjoyment of the parts allotted to them, until conveyances could be made.¹ But by the stat. 13 and 14 Vict. c. 60, s. 30, in a decree for partition of lands, it shall be lawful for the Court to declare that any of the parties to the suit wherein such decree is made are trustees of such lands or any part thereof, or to declare concerning the interests of unborn persons who might claim under any party to the suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transaction concerning which such decree is made, that such interests of unborn persons are the interests of persons, who, upon coming into existence, would be trustees within the meaning of the Act; and thereupon it shall be lawful for the Lord Chancellor, or the Court of Chancery, as the case may be, to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the Court or the Lord Chancellor might, under the provisions of the Act, make concerning the estates, rights, and interests of trustees born or unborn. 715.

Title must
be shown.

As a partition is completed by mutual conveyances, it is essential to show a title; and if there is anything suspicious in the plaintiff's title, the Court will leave him to Law, unless it is a case of equitable title.² 716.

¹ St. § 652.

² St. § 653.

The Court will decree a partition even in a suit by or against persons who are only tenants for life or years; and the decree will be binding on all whom they virtually represent, but not on other persons. Thus, a decree in a suit by or against a tenant for life, will be binding on the remainderman who is not *in esse* at the time, on the ground of virtual representation, if the Court is of opinion that it will be for the benefit of such remainderman that the agreement should be carried into effect, either as it stands, or with such variations as the Court may think proper.¹ 717.

Partition by or against tenants who have limited interests.

But on the other hand, a reversioner cannot maintain a suit for a partition.² 718.

The Court will frequently decree a pecuniary compensation to one, in order to make up his share to its proper value, where the estate cannot conveniently be divided into equal parts.³ And instead of dividing each of several distinct estates, the whole of one estate is frequently allotted to one person, and the whole of another estate to another person, and a compensation is directed to be made to the person to whom the less valuable estate is allotted.⁴ So, to one who has made improvements on the estate, the property on which the improvements have been made will be assigned, or a compensation will be given him. And care will be taken to assign to the parties such portions of the estate as will best accommodate

Equitable adjustments.

¹ St. § 656, 656 a.

² *Evans v. Bagshaw*, L. R. 5 Ch. Ap. 340.

³ St. § 654.

⁴ St. § 557.

them ; and the Court will act according to its own notions of general justice and equity between the parties, and will, if necessary for that purpose, direct a distinct partition of each of several portions of the estate in which derivative alienees have distinct interests, in order to protect those interests ; or it will give other special directions to the commissioners, and nominate the commissioners, instead of allowing them to be nominated by the parties.' 719.

SECTION II.

OF THE SETTLEMENT OF BOUNDARIES.

General
rule.

THE general rule observed by Courts of Equity is, not to exercise jurisdiction in settling boundaries on the mere ground that they are a subject of controversy, but to require that there should be some superadded equity.¹ 720.

Confusion
through
fraud.

Thus, if the confusion of boundaries has been occasioned by fraud, that will constitute a sufficient ground for the interference of the

¹ St. § 655, 656, b, c.

² St. § 615-623 ; and on this subject see *Wake v. Conyers*, 2 Lead. Cas. Eq., 2d ed. 362, *et seq.**

* A Court of Equity has no jurisdiction to try a naked question of title to real estate. *Hickman v. Cook*, 3 Humphreys, 640 ; *The Alton M. & F. Ins. Co. v. Buckmaster*, 13 Ill. 201. Controversies respecting lost bounds not presenting any peculiar Equity have been left to be settled by proceedings at Law. *Perry v. Pratt*, 31 Conn. 433.

Court. And if the fraud is established, the Court will by commission ascertain the boundaries, if practicable; and if that is not practicable, it will do justice between the parties by assigning reasonable boundaries or setting out lands of equal value.¹ 721.

In the next place, there will be a sufficient ground for the jurisdiction, if the confusion has arisen by the negligence or misconduct of a person standing in such a relation to the opposite party as imposed upon him an obligation to preserve and protect the boundaries. Thus, a tenant or a copyholder is under an implied obligation to preserve them; and if through his default there arises a confusion of boundaries, the Court will interfere as against such tenant or copyholder to ascertain and fix them. But even in these cases, it is indispensable to aver and to establish by proofs that the boundaries cannot be found without being ascertained under the order of the Court.² 722.

Confusion through fault of a party whose duty it was to preserve the boundaries.

Equitable proceedings will also lie when they will prevent multiplicity of suits.³ 723.

Multiplicity of suits.

SECTION III.

OF THE ASSIGNMENT OF DOWER.

COURTS of Equity will now exercise a concurrent jurisdiction with Courts of Law in the assignment of dower in all cases, after the title of the widow, if

¹ St. § 619, 623.

² St. § 620.

³ St. § 621.

disputed, has been established. There is no difficulty in maintaining this jurisdiction, as the case can scarcely be supposed in which the widow may not either want a discovery of the title-deeds, or of dowable lands, or some other kind of discovery, or some assistance which it was the peculiar province of the Court of Chancery to afford.¹ 724.

¹ St. § 624-631; 2 Lead. Cas. Eq., 2d ed. 402, 403; Tudor's Lead. Cas. Real Prop., 2d ed. 55.

TITLE IV.

**Of Protective Equity.
Irrespective of Disability.**

CHAPTER I.

OF PROTECTION FROM LITIGATION OR INJURY, AFFORDED BY THE CANCELLING, DELIVERING UP, AND SECURING OF DOCUMENTS.

COURTS of Equity frequently cancel, or rescind, or order the delivery up of instruments which have answered the end for which they were created, or instruments which are voidable, or instruments which are in reality void and yet apparently valid. This is done upon the principle, as it is technically called, *quia timet*, that is, for fear that such instruments may be vexatiously or injuriously used, when the evidence to impeach them may be lost or diminished, or for fear that they may throw a cloud or suspicion over the plaintiff's title and interests.¹ 725.

Voidable and void instruments and those which have answered their purpose.

But where the illegality of the instrument appears on the face of it, so that its nullity can admit of no doubt, Equity will not interfere; because, in that case, the ground for interference does not exist.² 726.

¹ St. § 694, 698, 699, 700, 705; *Cooper v. Joel*, 27 Beav. 313; *W— v. B—*, and *B— v. W—*, 32 Beav. 574; *Onions v. Cohen*, 2 Hem. & M. 354.*

² St. § 700 a.

* *Petit v. Shepherd*, 5 Paige, 493; *Fish v. French*, 15 Gray, 520.

Courts of Equity will generally cancel or rescind instruments, or order them to be delivered up, where there is an actual or constructive fraud, and the plaintiff has not participated therein, or is not *in pari delicto*; or where there is an offence against public policy, and the plaintiff has participated therein, and is *in pari delicto*, but yet public policy would be more promoted by assisting the plaintiff, than by refusing to assist him.¹ 727.

Where both parties are concerned in an illegal act, it does not always follow that they stand *in pari delicto*; for one party may act under circumstances of oppression, imposition, hardship, undue influence, or great inequality of condition or age; so that his guilt may be far less in degree than that of his associate in the offence.² 728.

In cases of usury,(a) if the lender comes into a Court of Equity, seeking to enforce the contract, the Court will refuse to give any assistance, and will re-

¹ St. § 298, 695; W— v. B—, and B— v. W—, 32 Beav. 574.*

² St. § 300.

(a) See *supra*, par. 40, note.

* This was a recent English case where the daughter concurred with her father in a covenant to surrender copyholds by way of mortgage to one who loaned a sum of money to the father; part of the consideration being the permission of the father for the mortgagee to continue his visits to the daughter, whom he was seducing or had seduced; upon bill and cross-bill to enforce, and to set aside the contract, the Court at first considered, that it could not interfere for either party, but ultimately ordered the deed to be cancelled, and that the grantee should pay the costs of both sides. St. Eq. Jur. 300 a.

pudiate the contract. But, on the other hand, if the borrower comes into a Court of Equity, seeking relief against the contract, the Court will interfere, although only on the terms that the plaintiff will do equity, by paying the defendant what is really due to him, deducting the usurious interest.¹ And if the borrower has paid the money, Courts of Equity, and indeed Courts of Law also, will assist him to recover back the excess beyond principal and lawful interest; for the maxim, *volenti non fit injuria*, does not apply to the borrower, since he cannot be said to have voluntarily paid the usurious interest; and as to being a participator in the offence, he was compelled to submit to the terms which oppression and his necessities imposed on him.² 729.

But relief is not granted where both parties are truly *in pari delicto*; for the maxim is, that *in pari delicto, potior est conditio defendentis et possidentis*.³ An exception occurs, however, as already stated, where public policy would thereby be promoted; as in the case of a gaming security,(a) which is void, and money paid on it may be recovered back.⁴ 730.

The Court will not interfere between a voluntary donor and donee, either by causing a voluntary deed or writing to be delivered up to the donor, or by decreeing specific performance of it in favor of the donee, unless the subsequent conduct of

¹ St. § 301.

² St. § 302.

³ St. § 298, 299.

⁴ St. § 303, 304.

(a) See Smith's Manual of Common Law, Am. ed. 65.

the donor has raised an equity for valuable consideration in favor of the donee. And a purchaser for value of an interest in land from a voluntary donor, cannot require the voluntary deed or agreement to be delivered up to him to be cancelled.¹ 731.

Where, just before going through the marriage ceremony with his deceased wife's sister, a man vests property in trustees for her benefit, neither he nor his representatives after his death can set the gift or settlement aside.² 732.

A settlement made by an unmarried lady shortly after majority, without contemplating marriage with any particular person, will be set aside as an improvident act of a person who ought to be protected by the Court.³ 733.

Forged instruments may be decreed to be delivered up, without any prior trial, on the point of forgery.⁴ 734.

Assistance will often be given even in regard to unexceptionable instruments. A Court of Equity will order them to be delivered up to the party entitled to them, if his title to the property to which they relate is not disputed. But where the title to the possession of deeds and other writings depends on the validity of the title of the party to the property to which they relate, and he is not in possession of the property, and

¹ De Houghton v. Money, L. R. 1 Eq. 154; Dillwyn v. Llewellyn, 4 D. F. & J. 517.

² Ayerst v. Jenkins, L. R. 16 Eq. 275.

³ Everitt v. Everitt, L. R. 10 Eq. 405.

⁴ St. § 701.

Forged instruments.

Delivery up of unexceptionable instruments to party entitled to them.

the evidence of his title to it is in his own power, or it does not depend on the production of the deeds or writings of which he prays the delivery; in such case, he must first establish his title to the property, before he can entitle himself to a delivery of the deeds.¹ 735.

Again, persons having rights and interests in real estate are entitled to an inspection and copies of the deeds under which they claim title.² 736.

Inspection
and copies
of deeds.

And remaindermen and reversioners, and other persons having limited or ulterior interests in real estate, have a right, in many cases, to have the title-deeds secured or brought into Court for preservation. But this will not be directed unless it clearly appears that there is danger of a loss or destruction of the instruments in the hands of the persons possessing them; and also that the interest of the plaintiff is not too contingent or too remote to warrant the proceeding.³ 737.

Securing of
documents.

Bonds and notes given by a relative have been ordered to be delivered up by executors or administrators, where it has been fairly inferable, from the conduct of the deceased, that he did not intend that any use should be made of the securities.⁴ 738.

Delivery
up of secu-
rities.

¹ St. § 703.

² St. § 704.

³ St. § 704.

⁴ See St. § 705 a-706 a.

CHAPTER II.

OF PROTECTION FROM LITIGATION RESPECTING THE
PROPERTY OF ANOTHER, BY MEANS OF INTER-
PLEADER.

Common Law process. THERE was a process of interpleader at Common Law, but it had a very narrow range of application;¹ and prior to the statute 1 and 2 Will. IV, c. 58, it fell into entire disuse;² and although the application of the legal remedy of interpleader has been greatly extended, yet the jurisdiction in Equity seems to have been left substantially to the old foundation.³ 739.

Definition of an interpleader. An interpleader is a proceeding by a person from whom two or more other persons, whose titles are connected (by reason of the one being derived from the other, or of both being derived from a common source), and whose rights he cannot readily determine, have claimed the same thing, wherein he himself claims no interest, and the object of which is to compel them to contest the matter between themselves, without involving him in any vexatious litigation respecting it.⁴ 740.

¹ St. § 801.² St. § 805.³ St. § 823.⁴ See St. § 806, and notes, and 807, 810-816, 820, 824; Jones v. Thomas, 2 Sm. & Gif. 186.*

* Spring v. So. C. Ins. Co., 8 Wheat. 268; Mitford Eq. Pl. (Tyler's ed.), 234.

Thus, where a tenant is liable to pay rent, but there are several persons claiming title to it, in privity of contract or tenure, he is entitled to file an interpleader to compel them to ascertain to whom the rent is payable.¹ But if a claim to rent is set up by a mere stranger, under a title paramount, and not in privity of contract or tenure, the tenant cannot compel his landlord to interplead with such a stranger; for the demand made by the latter is not a demand of the same nature or in the same right; the stranger cannot demand the rent, as such, but if he succeeds in an ejectment, he has only a right to damages for use and occupation; whereas the landlord claims the rent, as such, in privity of contract, tenure, and title.² Besides, the tenant is under a contract to pay the rent to his landlord.³ 741.

Illustrations in the case of landlord and tenant.

Where the title of the one claimant was not derived from that of the other, nor were they both derived from the same common source, but they were independent of and adverse to each other, the party holding the property had to defend himself as well as he could at Law; for if a Court of Equity had exercised jurisdiction in such cases, it would have been asserting the right to try mere legal titles, on a controversy between different parties, where there was no privity of contract between

Connection between the titles of the two claimants.

¹ St. § 811.

² St. § 817 b.

³ St. § 812 b. On this subject see *Cook v. Earl of Rosslyn*, 1 Gif. 167.

them and the third person who called for an interpleader.¹ The Judicature Act, 1873 (36 and 37 Vict. c. 66), s. 24, may, however, enable a Court of Equity to deal with such cases. 742.

Principal and agent. Property put into the hands of a private agent by his principal, or received by an agent for his principal, is not the subject of an interpleader, on the assertion of a claim to it by a third person under an independent adverse title; but the agent must deliver it to the principal; for the possession of the agent is the possession of the principal. And the like doctrine would prevail in favor of a third person to whom the principal, after the bailment, had transferred the right to the property, where the transfer had been recognized and assented to by the agent.² But if the principal has created an interest in or lien on the funds in the hands of the agent, in favor of a third person, and the nature and extent of that interest or lien is controverted between the principal and such third person, there an interpleader will lie.³ 743.

Ability to admit title of either claimant. It seems essential that the person by whom an interpleader is filed should be in such a position as to be able to admit the title of either claimant. Thus, a sheriff, who seizes goods on execution, cannot ordinarily maintain an interpleader, on account of the existence of adverse claims to the property; for, as to one of the defendants he neces-

¹ St. § 816, 820.

² St. § 817, 817 a, 818.

³ St. § 817 a.

sarily, under ordinary circumstances, admits himself to be a wrongdoer.¹ 744.

It is not necessary that proceedings should have been commenced either at Law or in Equity, in order to found a jurisdiction for an interpleader.² 745.

Actual proceedings not necessary.

In order to prevent an interpleader being made the instrument of delay or of collusion with one of the parties, the Courts require that the plaintiff should make an affidavit that there is no collusion between him and any of the other parties; and also, if it is a case of money due by him, that he should bring the money into Court, or at least should offer to do so.³ 746.

Preliminaries.

¹ See St. § 821; and *Child v. Mann*, L. R. 3 Eq. 806, where a bill of interpleader by a sheriff, who sold under the order of the Court of Chancery, was sustained.*

² St. § 802.

³ St. § 809.

* See also *Parker v. Barker*, 42 N. H. 78.

CHAPTER III.

OF PROTECTION FROM REPEATED OR RENEWED LITIGATION, AFFORDED BY DECREES UPON BILLS OF PEACE, OR BILLS TO ESTABLISH WILLS.

SECTION I.

OF BILLS OF PEACE.

Definition
of a bill of
peace.

THAT which was termed a Bill of Peace is a proceeding filed to establish and perpetuate, in favor of or against a number of persons, some general private right, which from its nature is likely to be sought to be established or overthrown by different persons, at different times, and by different actions; or to confirm and perpetuate a right which has been satisfactorily established by two or more trials at Law, but is in danger of being again controverted.¹ 747.

Ground of
interference.

In the former of these classes of cases, Equity interferes in order to prevent multiplicity of suits; in the latter, to prevent oppressive litigation.² 748.

¹ St. § 853, 854, 859.

² St. § 853, 854, 859.

The former occurs in the case of a proceeding to settle the amount of a general fine to be paid by all the copyhold tenants of a manor, or to establish a right of common of the freehold tenants of a manor.¹ 749.

Instance of the first class of bills of peace.

In most cases of this class, before the stat. 21 and 22 Vict. c. 27, enabling the Court of Chancery to try questions of fact, with or without a jury, it was held that the plaintiff ought to establish his right by a determination of a Court of Law, before he filed his bill in Equity. And if he did not do so, and the right he claimed had not the sanction of a long possession, and he had any means of trying the matter at Law, a demurrer would hold; for the object of these bills, as their name itself imports, was simply to secure the quiet enjoyment of a right which, *prima facie* at least, clearly exists, and not to decide the question of a doubtful right. If he had not been actually interrupted or dispossessed, so that he had had no opportunity of trying his right, he might file a bill to establish it, and the Court would, if it was necessary, ascertain it by an action or issue at Law, and then make a decree finally binding on all parties.² 750.

Pre-requisites to a bill of peace.

¹ St. § 856; *Phillips v. Hudson*, L. R. 2 Ch. Ap. 243; *Warrick v. Queen's College, Oxford*, L. R. 10 Eq. 105; 6 Ch. Ap. 716; *Jegon v. Vivian*, L. R. 6 Ch. Ap. 742. For other instances, see St. § 855, 856.

² See St. § 854, and note.

Rights in
contraven-
tion of
public
rights not
protected in
this way.

It seems that Courts of Equity, on principles of public policy, will not, on such a proceeding, decree a perpetual injunction for the establishment or the enjoyment of the right of a party who claims in contravention of a public right.¹ 751.

SECTION II.

OF PROCEEDINGS TO ESTABLISH WILLS.

Jurisdiction
in general
belongs to
the Court
of Probate.

THE proper jurisdiction for deciding as to the validity of wills, where they are actually contested, belongs to the Court of Probate, subject to these exceptions: 752.

Exceptions. 1. The heir-at-law may, by consent, come into a Court of Equity to have the validity of the will tried. He cannot come into Equity unless by consent; because he has a legal remedy by ejectment, and if there are any impediments to the proper trial of the merits of such an ejectment, he may come into Equity to have them removed.² 753.

2. A devisee in possession, whether legal or equitable, has an equity to have the will established against

¹ St. § 858.

² St. § 1447, note; see stat. 21 and 22 Vict. c. 27; 25 and 26 Vict. c. 42; *Egmont v. Darell*, 1 Hem. & M. 563; *Cowgill v. Rhodes*, 38 Beav. 310.

the heir, although the heir has brought no action of ejectment against the devisee, and although no trusts are declared by the will, and although it is not necessary to administer the estate under the direction of a Court of Equity.¹ And the Court has jurisdiction to entertain a suit to establish a will against the parties claiming under a prior will.² 754.

3. And where a will is contested, and it is necessary to establish its validity, in order to accomplish purposes which it is the province of Courts of Equity to effect (such as the execution of trusts, the marshalling of assets, etc.), and the parties are dissatisfied with the probate, the Court of Equity in which the controversy is depending will cause the validity of the will to be tried; and if the will is established, a perpetual injunction may be decreed.³ 755.

¹ *Boyse v. Rossborough*, Kay, 71, 102, 111; 1 K. & J. 124, 139; 3 D. M. & G. 817; 6 H. L. Cas. 1; *Williams v. Williams*, 33 Beav. 306.

² *Lovett v. Lovett*, 3 K. & J. 1.

³ St. § 1445-7; see Sir Hugh Cairns's Act, stat. 21 and 22 Vict. c. 27; and Sir John Rolt's Act, 25 and 26 Vict. c. 42.*

* As a general rule Equity has no jurisdiction over the probate of wills. Courts of Probate have jurisdiction over all proceedings in the probate of wills. And generally neither Courts of Law or Equity can take notice of a will before it has been allowed in the Probate Court. 1 Perry on Trusts, § 181, 182.

CHAPTER IV.

OF PROTECTION FROM LOSS OR INJURY BY
INJUNCTION.

Jurisdiction.

THE jurisdiction in granting injunctions has arisen either from the want of any legal remedy, or from the imperfection and inadequacy of the legal remedy in cases where any such remedy exists.¹ 756.

By the Common Law Procedure Act, 1854 (17 and 18 Vict. c. 125, ss. 79-82), the power of granting injunctions in certain cases was given to the Superior Courts of Common Law. This, however, did not oust the jurisdiction of the Court of Chancery, but only gave concurrent jurisdiction to the Courts of Common Law. 757.

By the stat. 28 and 29 Vict. c. 99, s. 1, par. 8, the power of granting an injunction in certain cases, is given to the County Courts. 758.

Injunctions are either temporary or perpetual,

Injunctions, when granted on bills are either temporary, as until the coming in of matter of defence, or until the further order of the Court, or until the hearing of the cause; or they are perpetual, as when they form a part of the decree after the hearing, and amount to a perpetual prohibition.² 759.

¹ St. § 864.² St. § 873.

Injunctions may be also either total or partial, qualified or unconditional.¹ And some are of a preventive, others of a restorative character. The former are the most common.² 760.

total or partial, qualified or unconditional, preventive or restorative.

By the Judicature Act, 1873 (36 and 37 Vict. c. 66), s. 25 (8), "a mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any color of title, and whether the estates claimed by both or by either of the parties are legal or equitable." 761.

Injunctions and receivers.

Courts of Equity constantly decline laying down any rule which shall limit their power and discretion as to the particular cases in which injunctions shall be granted or with-

Equity will not limit its power of granting injunctions.

¹ St. § 886.

² St. § 862.

General
rule as to
cases where
they will be
granted.

held.¹ And it would seem, that unless some special reason intervenes, they will in all cases grant an injunction to protect their own officers, who execute their process, against any suit brought against them for acts done under or by virtue of such process;² and to prevent any one from prejudicing another, contrary to equity and good conscience;³

Some specific cases
pointed out.

so that it would appear to be only needful to advert to a few specific cases presenting points which are not of a sufficiently obvious character to be omitted.* 762.

¹ St. § 959 b. ² St. § 891. ³ See St. § 903-8, 927-9, 951-9.

* In former editions of this work the author has considered briefly in this connection the subject of Bills for Injunction to restrain proceedings at Law, a practice rendered unnecessary in England since the passage of the Judicature Act, and hence omitted in the 12th London edition.

Injunctions to restrain proceedings at Law were either common or special. A common injunction was one that issued upon and for default of a defendant in not appearing to or answering a bill, in order to restrain him from proceeding at Law touching the matter in the bill, till he should have fully answered the bill, and cleared his contempt, and the Court should make other order to the contrary. It was also granted where the defendant obtained an order for further time to answer. This kind of injunction was of course; but a *prima facie* case must now be made by the bill, and must be supported by affidavit. (*Senior v. Pritchard*, 16 Beav. 473; *Lovell v. Galloway*, 17 Beav. 1; *Earl of Oxford's Case*, 2 Lead. Cas. Eq., 2d ed. 601, *et seq.*; 15 and 16 Vict. c. 86, s. 58; *Consol. Ord. XXV*; 2 Dan. C. P., 4th ed. 1462 (b), 1472 (m)).

Injunctions upon other occasions, or involving other directions, were called special injunctions. (St. Eq. Jur. § 892.) And the granting or refusing of them is a matter resting in the sound discretion of the judge. (St. Eq. Jur. § 863.)

I. An injunction will be granted to restrain voluntary waste.¹ But Courts of I. Waste.

¹ St. § 912-919.

Injunctions to restrain proceedings at Law may be perpetual or temporary, total or partial, qualified or unconditional. (St. Eq. Jur. § 886.) And they may be granted at any stage of the legal suit. Thus an injunction is sometimes granted to stay trial; sometimes after verdict, to stay judgment; sometimes after judgment, to stay execution; sometimes after execution, to stay the money in the hands of the sheriff, if it is a case of *feri facias*, or to stay the delivery of possession, if it is a writ of possession. (St. Eq. Jur. § 886.) There is an almost infinite variety of occasions on which an injunction may issue to stay legal proceedings. (St. Eq. Jur. § 884.) In general it may be stated that an injunction will issue in all cases where, by accident, fraud, or otherwise, it would be against conscience to proceed in another Court. (St. Eq. Jur. § 878-885, 887, 889; High on Injunctions, § 44-56.)

Bills for an injunction restraining a person from availing himself of a judgment actually obtained at Law, which it would be against conscience to execute, are usually called Bills for a New Trial. (St. Eq. Jur. § 887.) They have not been countenanced much of late years. In general it has been considered that the ground must be such as would be a ground for a bill of review of a decree in Equity on the discovery of new matter. (St. Eq. Jur. § 888.) And Courts of Equity will not relieve against a judgment at Law, or in a foreign Court, upon a ground which could have been used and would have been available as a defence at Law or in such foreign Court. So that no relief will be granted where the party aggrieved has been guilty of laches in omitting to procure the proper proofs before the trial by means of a bill of discovery, or in neglecting to apply for a new trial within the proper time. Nor will relief be granted upon a ground which has been fully and fairly tried at Law or in a foreign Court. (St. Eq. Jur. § 887, 894, 895, 895 a.)

In the *Marine Ins. Co. of Alexandria v. Hodgson*, 7 Cranch, 332, it was said by Ch. Justice Marshall, "that any fact which

Equity have no means of interfering in cases of permissive waste by a tenant for life.¹ 763.

¹ *Powys v. Blgrave, Kay*, 495; 4 D. M. & G. 448.*

clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself in a Court of Law, or of which he might have availed himself at Law but was prevented by fraud or accident, unmixed with any fault or negligence in himself or his agents, will justify an application to a Court of Chancery."

The rule laid down by Ch. Justice Marshall has been generally followed by the Courts of this country. (See *Robinson v. Wheeler*, 51 N. H. 384; *Craft v. Thompson*, Id. 536; *Holland v. Trotter*, 22 Gratt. (Va.), 136; *Smith v. Allen*, 63 Ill. 474; *High on Injunctions*, § 97.)

The Court of Chancery will not stay proceedings in any criminal matter, or in any cases not strictly of a civil nature, such as proceedings on a *mandamus*, or an indictment, or an information, or a writ of prohibition, unless the parties who are seeking redress by such proceedings are also plaintiffs in Equity, proceeding at the time, in regard to the same matter of right, for redress in the form of a civil suit, and of a criminal prosecution. (St. Eq. Jur. § 893; *High on Injunctions*, § 23.)

Nor will the Court grant an injunction against any legal proceedings on the ground of a mistake in pleading or in the conduct of the cause; for a party has no right to invoke the aid of a Court of Equity, or to subject the opposite party to fresh litigation, in order to remedy the consequences of the unskilfulness, carelessness, or inadvertence of those whom he employs. Nor will such an injunction be granted on the ground of a failure in obtaining fresh evidence, or merely to let in new corroborative proofs, for that would be to keep alive litigation; nor on the ground that a question of law has been erroneously decided by a Court of Law, for that would be to constitute the Court of Chancery a Court of Appeal from the decisions of Courts of Common Law. (See St. Eq. Jur. § 897; *High on Injunctions*, § 178.)

* For such a tenant is not bound to repair.

A tenant for life impeachable of waste is only allowed to fell timber when, where, and in such manner as that it will be for the benefit of the succession; and he is not entitled to the timber when cut.¹ 764.

A tenant for life, unless unimpeachable for waste, is not entitled to open any mines of coal or minerals or quarries which had not been previously opened, but may work open mines.² 765.

By the Judicature Act, 1873 (36 and 37 Vict. c. 66), s. 25 (3), "An estate for life ^{Equitable waste.} without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate." 766.

Prior to this Act the Court of Chancery would sometimes interfere with respect to what is commonly, although with no great propriety, called equitable waste;³

¹ 2 Sp. 570; *Bagot v. Bagot*, 32 Beav. 509.

² 2 Sp. 573; *Bagot v. Bagot*, 32 Beav. 509.

³ St. § 912.

The writ of injunction is not addressed to the Courts in which or by whose authority the prohibited proceedings are carried on. It does not affect to interfere with them. It is directed only to the parties, prohibiting them from making an unfair use of the proceedings of a Court of Law. (St. Eq. Jur. § 875.)

On similar principles, where both the parties to a suit in a foreign country are residing within this country, the Courts of Equity have full authority to act on them, whether by injunction or otherwise, with regard to such suits; because they can act on the parties *in personam*, without presuming to direct or control the foreign Court. (St. Eq. Jur. § 899, 900; High on Injunctions, § 57-60.)

that is, such destructive or injurious acts as would not be punishable as waste at Law, because consistent with the legal rights of the party committing them, but which are considered as waste, and as unjustifiable, in the view of a Court of Equity, as occasioning an unconscientious and irreparable injury to the interests of the other parties; as where a tenant for life without impeachment of waste, or a tenant in tail after possibility of issue extinct, or a tenant in fee with an executory devise over, attempts or intends to pull down houses, or totally to destroy a wood, or to cut down trees which were planted, even though by himself, or were left standing for the shelter or ornament of the house or its grounds.¹ 767.

Where such trees have been cut down, the Court will give damages proportionate to the injury (if any) done to the inheritance.² 768.

Waste in
the case of
tenants in
common,
coparcen-
ers and
joint ten-
ants.

On similar grounds, although in general the Court will not interfere by injunction to prevent waste as between tenants in common, or coparceners, or joint tenants, because they have a right to enjoy the estate as they please, and because they can make partition when they choose, so as to prevent future waste; yet the Court will interfere in special cases, as where the waste is destructive of the estate, and not within the usual legitimate exercise of the right of enjoying the estate.³ 769.

¹ St. § 915; 2 Sp. 570, 571; *Micklethwait v. Micklethwait*, 1 D. & J. 504; *Turner v. Wright*, Johns. 740; 2 D. F. & J. 234.

² *Bubb v. Yelverton*, Ex parte *Hastings*, L. R. 10 Eq. 465.

³ St. § 916; and see 909, note.

II. In the case of public nuisances, an information lies in Equity to redress the grievance by way of injunction.¹ In regard to private nuisances, in order to justify the interposition of a Court of Equity, there must be such an injury as from its nature is not susceptible of being adequately compensated by damages at Law, or such as from its continuance must occasion a constantly recurring grievance, which cannot be prevented otherwise than by an injunction.² 770.

II. Public nuisances.

Private nuisances.

III. The Court frequently interferes in cases of patents for inventions.³ If the patent has been recently granted, and its validity has not been already ascertained by a trial, and the defendant denies it, or puts the matter in doubt, there, in general, the Court will not grant an immediate injunction, but will require the validity of the patent to be ascertained in

III. Patents.

¹ St. § 923, 924 a.*

² St. § 925, 926; see *Eaden v. Firth*, 1 Hem. & M. 573; *Tippling v. St. Helen's Smelting Company*, L. R. 1 Ch. Ap. 66.†

³ St. § 930-3; *Clark v. Fergusson*, 1 Gif. 184.‡

* A public nuisance cannot exist in acts warranted by law or authorized by legislative sanction, even though the act complained of might, independent of the statute, be a nuisance. High on Injunctions, § 523. And private persons seeking the aid of equity to restrain a public nuisance, must show some special injury peculiar to themselves, aside from and independent of the general injury to the public. High on Injunctions, § 522, and cases there cited.

† *Burnham v. Kempton*, 3 Am. Law Reg. U. S. 380; see also *Miss. & Mo. R. R. v. Ward*, 2 Black (Sup. Ct.), 485.

‡ High on Injunctions, § 602. The right to interfere by injunction in this class of cases is, in this country, exercised only by the United States Courts, the State Courts being devoid of jurisdiction. Id. § 602.

the first instance. But if the patent has been granted some length of time, and the patentee has put the invention into public use, and has had an exclusive possession of it under his patent for such a period of time that there is a fair ground for presuming that he has an exclusive right, the Court will ordinarily interfere by way of preliminary injunction, pending the proceedings; reserving, of course, until the ultimate decision of the cause, its own final judgment on the merits. And an injunction will be granted after the time limited for the expiration of a patent, to restrain the sale of articles manufactured in violation of the patent while it was in force.¹ 771.

IV. Copy-
rights.

IV. Courts of Equity often afford protection to copyrights, and act upon similar principles with respect to the title.² 772.

If a work is of a clearly irreligious, immoral, libellous, or obscene character, they will not protect it.³ 773.

It is not infringement of the copyright of a book to make *bond fide* quotations or extracts from it, or a *bond fide* abridgment of it, or to make a *bond fide* use of the same common matter in the compilation of an-

¹ St. § 934.*

² St. § 935, 949, 950; see Phillips on Copyr. 146-160.†

³ St. § 936-8.‡

* High on Injunctions, § 606, *et seq.*

† High on Injunctions, § 641. By Acts of Congress, the power of issuing injunctions in cases of copyrights in this country is vested in the United States Courts, and as in the case of patents, is exclusively exercised by these Courts. *Ibidem*, 16 St. at Large, ch. 230, p. 212.

‡ High on Injunctions, § 642.

other work. But what constitutes a *bond fide* case of extracts, or a *bond fide* abridgment, or a *bond fide* use of the same common materials, is often a matter of most embarrassing inquiry.¹ 774.

It is not an infringement of copyright for a person to represent a play dramatized from a novel written by another. But it is an infringement to print and publish a play so constructed, at least if it embodies verbatim the most stirring passages from the novel.² 775.

V. Courts of Equity will also restrain the publication of private letters, whether of a V. Letters. literary character or otherwise, where the publication is attempted without the consent of the author. The property which the receiver has in letters is of a qualified kind. To permit the receiver to publish letters of a literary character, would be allowing him to sell or give away that which belongs and may be of value to another; and to permit the receiver to publish letters of other kinds, would be allowing a practice which must prove most prejudicial to the interests of society.³ 776.

¹ Upon this subject see St. § 939-942, and notes, and *Jarrold v. Houlston*, 3 K. & J. 708; *Hotten v. Arthur*, 1 Hem. & M. 603.*

² *Tinsley v. Lacy*, 1 Hem. & M. 747.

³ St. § 944-8; see Phillips on Copyr. 27-34.†

* High on Injunctions, § 649, *et seq.*; *Story v. Holcombe*, 4 McLean, 307; *Gray v. Russell*, 1 Story, 11; *Wheaton v. Peters*, 8 Peters, 501.

† High on Injunctions, § 664. Photographing is within the prohibition. *Rossiter v. Hall*, 5 Blatch. C. C. 362.

VI. Applications to Parliament on private grounds may be restrained by injunction; but applications on public grounds cannot be restrained.¹ 777.

VII. Where both the parties to a suit in a foreign country are residing within this country, the Courts of Equity have full authority to act on them, whether by injunction or otherwise, with regard to such suits; because they can act on the parties *in personam*, without presuming to direct or control the foreign Court.² 778.

Courts of Equity effectuate their own decrees in many cases, by enjoining parties to yield up, deliver, quit, or continue the possession.³ 779.

¹ *Lancaster and Carlisle Railway Company v. Northwestern Railway Company*, 2 K. & J. 293; see *Steele v. North Metropolitan Railway Company*, L. R. 2 Ch. Ap. 237.*

² St. § 899, 900.†

³ St. § 959.

* St. Eq. Jur. § 1561; *Durfee v. Old Colony R. R. Co.*, 5 Allen, 230.

† High on Injunctions, § 57-60.

CHAPTER V.

OF PROTECTION FROM ANOTHER'S ABSCONDMENT BY
THE WRIT OF NE EXEAT REGNO.(a)

THE writ *ne exeat regno* is a prerogative writ which is issued to prevent a person from leaving the realm,¹ even though his usual residence is in foreign parts.² 780.

It was originally applied only to great political purposes.³ And although it is now applied in certain cases by custom to private civil matters only, yet it is employed with great caution and jealousy.⁴ 781.

This writ will not be granted, except in cases of equitable debts and claims; for, in regard to civil rights, it is treated in the nature of an equitable bail.⁵ 782.

To this, however, there are two exceptions: 1. Where alimony was actually decreed by the Ecclesiastical Court, and no appeal was made against the decree, the writ was granted, unless the husband made it appear that he did not intend to leave the kingdom. And

¹ St. § 1465.² 2 Sp. 15.³ St. § 1467.⁴ St. § 1467, note, § 1468. ⁵ St. § 1470.

(a) See the Absconding Debtors Act, 1870, stat. 33 and 34 Vict. c. 76.

it is presumed the writ would now be granted under similar circumstances in the case of alimony decreed by the Divorce Court.¹ 2. Where there is an admitted balance due from the defendant to the plaintiff, but a larger sum is claimed by the latter, the writ will be issued.² 783.

The equitable demand for which the writ will be issued, must be certain in its nature, of a pecuniary character, and actually payable, and not contingent.³ 784.

¹ St. § 1471, and note, and 1472.

² St. § 1471, 1473.

³ St. § 1474.

CHAPTER VI.

OF THE PROTECTION OF PROPERTY, BY TAKING
AWAY THE POSSESSION OR RECEIPT THEREOF,
OR BY REQUIRING SECURITY.

I. COURTS OF EQUITY very frequently prevent anticipated wrong or loss, by the appointment of a receiver to receive rents and other income or profits.¹ And such an appointment may be made even where the property is legal, and judgment creditors have taken possession of it under writs of *elegit*; for it is competent for the Court to appoint a receiver in favor of annuitants and equitable creditors, not disturbing the just prior rights, if any, of judgment creditors.² 785.

I. Appointment of a receiver.^(a)

¹ St. § 826.

² St. § 829.*

(a) See stat. 23 and 24 Vict. c. 145, s. 17-24.

* In appointing receivers, the Courts generally act upon well-established rules. In *Blandheir v. Moore*, 11 Md. 364, these rules were stated as follows: (1.) That the power of appointment is a delicate one, and is to be exercised with great circumspection; (2.) That it must appear that the claimant has a title to the property, and the Court must be satisfied by affidavit that a receiver is necessary to preserve the property; (3.) That the Court never appoints a receiver merely because the measure can do no harm; (4.) That fraud or imminent danger, if the intermediate possession

By the Judicature Act (36 and 37 Vict. c. 66), s. 25 (8), "A mandamus or an injunction may be granted, or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just." 786.

Nature of his office and possession. A receiver so appointed is treated as virtually an officer and representative of the Court, for the more speedy getting in of such rents, income, or profits, and the securing the same for the benefit of the person entitled to it. In the case of adverse claims, the appointment of a receiver does not at all affect the right. The Court virtually becomes the landlord *pro hac vice*, and the receiver, as an officer of the Court, is generally entitled to the possession; and his possession is treated as the possession of the Court, in the first instance, and then of the party who ultimately establishes his right to it; and, therefore, is not to be disturbed, even by an ejectment under an adverse title, without the leave of the Court.¹ 787.

His power. The receiver cannot proceed in any ejectment against the tenant, except by the au-

¹ St. § 831, 833, 833 a.

should not be taken by the Court, must be clearly proved; and, (5.) That unless the necessity be of the most stringent character, the Court will not appoint a receiver until the defendant is first heard in response to the application. See also Kerr on Receivers, 1st. Am. Edit.

thority of the Court.¹ And when in possession, he has very little discretion allowed him, but must apply from time to time to the Court for authority to do such acts as may be beneficial to the estate.² 788.

II. In other cases, the Court affords protection by an order to pay a fund into Court; in others, by directing security to be given, or money to be paid over.³ 789.

II. Payment into Court, or to the party entitled, or security.

III. The Court will also direct that papers and writings in the hands of executors and administrators shall be deposited with the Court for the benefit of those interested, unless there are other purposes which require that they should be retained in the hands of the executors or administrators.⁴ 790.

III. Deposit of documents.

IV. The Court will not ordinarily entertain suits for the specific delivery of chattels. But where the chattel is of such a nature that the loss of it could not be fully compensated by damages, the Court will decree a specific delivery thereof.⁵ 791.

IV. Delivery of chattels.

¹ St. § 833. ² St. § 833 a. ³ St. § 826, 839-848. ⁴ St. § 842.

⁵ St. § 708-710; *Pusey v. Pusey*, *Duke of Somerset v. Cookson*,

1 *Lead. Cas. Eq.*, 2d ed. 654, 655, *et seq.**

* *McGowin v. Remington*, 2 *Jones*, 56 (12 *Penn. Rep.*).

TITLE V.

**Of Protective Equity,
In Favor of Persons under Disability.**

CHAPTER I.

OF INFANTS.

THE care of infants, as persons who are not able to protect themselves, belonged to the Sovereign, as *parens patriæ*; and the correct opinion seems to be that this prerogative was delegated to the Court of Chancery from its first establishment; and that the jurisdiction did not belong to the Lord Chancellor only, in virtue of his general power as holder of the great seal and as keeper of the Royal conscience; since the jurisdiction might be exercised as well by the Master of the Rolls as by the Chancellor, and since an appeal lay, as in other cases in which the Court of Chancery had a general jurisdiction, from the decision of the Court of Chancery to the House of Lords.¹ 792.

By the Judicature Act, 1873 (36 and 37 Vict. c. 66), s. 34, there shall be assigned, subject as thereinbefore mentioned, to the Chancery Division of the High Court

¹ St. § 1333-7. And on this subject see *Eyre v. Countess of Shaftesbury*, 2 Lead. Cas. Eq., 2d ed. 538, *et seq.**

* *Cowls v. Cowls*, 3 Gilman, 436. Also as to guardianship in the United States, Schouler's Domestic Rel. 399, *et seq.*

of Justice, the wardship of infants and the care of infants' estates.

By the same Act, s. 25 (10), "in questions relating to the custody and education of infants, the Rules of Equity shall prevail." 793.

**Appoint-
ment of
guardians.** The Supreme Court will appoint a suitable guardian to an infant, where there is no other, or no other who will or can act, at least where the infant has property. If the infant has no property, the Court, perhaps, will not interfere; not from want of jurisdiction, but because it cannot exercise its jurisdiction usefully, without having the means of applying property for the benefit of the infant. Guardians appointed by the Court are considered as officers of the Court, and are held responsible to it accordingly.¹ 794.

**Removal of
guardians.** The Court will remove a guardian of any kind, whenever sufficient cause can be shown for such a purpose, or will regulate and direct the conduct of the guardian in regard to the custody and education and maintenance of the infant, and, if **Control
over them.** necessary, will even appoint the school where he shall be educated, and will require security to be given, if there is any danger of injury to his person or property.² 795.

Religion. The doctrine of the Court is that children should be brought up in the religion of their father. So that when a deceased father was a member of the Church of England, and the mother, who was

¹ St. § 1338.

² St. § 1339.

their guardian, had become one of the Plymouth Brethren, she was restrained from taking them to a meeting-house of that sect.¹ 796.

By the stat. 36 Vict. c. 12 (24th April, 1873), it is enacted that "from and after the passing of this Act it shall be lawful for the High Court of Chancery in England or in Ireland respectively, upon hearing the petition by her next friend of the mother of any infant or infants under sixteen years of age, to order that the petitioner shall have access to such infant or infants at such times and subject to such regulations as the Court shall deem proper, or to order that such infant or infants shall be delivered to the mother, and remain in or under her custody or control, or shall, if already in her custody or under her control, remain therein until such infant or infants shall attain such age, not exceeding sixteen, as the Court shall direct; and further, to order that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant or infants, and otherwise, as the said Court shall deem proper" (s. 1). 797.

Court of Chancery may order that mother may have access to and custody of infant under sixteen years.

The Court will also assist guardians in compelling their wards to go to the school selected by their guardian, as well as in obtaining the custody of the persons of their wards, when they are detained from them.² 798.

Assistance of guardians.

¹ In re Newbury, L. R. 1 Eq. 431; 1 Ch. Ap. 263.*

² St. § 1340.

* St. Eq. Jur. 1347 e; Schouler's Dom. Rel. 460.

Removal of
children
from their
parents.

In general, parents are intrusted with the custody and education of their children, on the natural presumption that the children will be properly treated, and that due care will be taken of them, in regard to learning, morals, and religion. But whenever this presumption is negatived by the actual state of the case, and a father is guilty of gross ill-treatment of his infant child, or is living in habits of gross immorality, or otherwise acts in a manner injurious to the morals or interests of his children, the Supreme Court will deprive him of the custody of his children, and appoint a suitable person to act as guardian.¹ 799.

Conversion
of the
infant's
property.

Guardians may change the nature of the property, when it is manifestly for the benefit of the infant, but not otherwise. But although it has been said that there is no equity in such a case between the representatives of the infant, nevertheless, for the purpose of preventing any such acts of the guardian, in case of the death of the infant before he comes of age, from changing improperly, through partiality or otherwise, the rights of the parties, who, as heirs or distributees, would otherwise be entitled to the property, Courts of Equity hold lands purchased by the guardian with the infant's personal estate, or with the rents and profits of his real estate, to be personalty, and distributable as such; and on the other hand, they treat the proceeds arising from the

¹ St. § 1341-9; *Swift v. Swift*, 34 Beav. 266.*

* *Cowls v. Cowls*, 3 Gilman, 436.

sale of real property (as, for example, of timber cut down on a fee-simple estate of the infant) as real estate. It is common for guardians to ask the sanction of the Court to any acts of this sort; and, when the Court directs any such change of property, it directs the new investment to be in trust for the benefit of those who would be entitled to it, if it had remained in its original state.¹ 800.

Sometimes infants become wards of Court. Properly speaking, a ward of Court is a person who is under a guardian appointed by the Court. But whenever a suit is instituted in the Court relating to the person or property of an infant, although he is not under any general guardian appointed by the Court, he is treated as a ward of the Court.² And even a mere order for maintenance made without suit constitutes an infant a ward of Court.³ 801.

Who are
wards of
Court.

Any act affecting the person or state or property of a ward of Court, unless done under the express or implied direction of the Court, is treated as a violation of the authority of the Court, and the offending party will be arrested for that contempt, and compelled to submit to such order, and to such punishment by imprisonment, as are applied to other cases of contempt.⁴ 802.

All acts
affecting
them must
be done
under the
direction of
the Court.

¹ St. § 1357.

² St. § 1352; *Gynn v. Gilbard*, 1 Dr. & Sm. 356.

³ In re *Graham*, L. R. 10 Eq. 530.

⁴ St. § 1353.

Mainte-
nance.(a) Whenever an infant is a ward of Court and a suit is depending in the Court as to his property, the Court will direct a suitable maintenance for the infant, having a due regard to his rank, intended profession or employment, property, and expectations.¹ And independently of the stat. 23 and 24 Vict. c. 145, s. 26, maintenance will now be ordered even where the infant is not a ward of the Court, and not resident within the jurisdiction, if he has no father, or his father is unable to maintain him.² 803.

Where a legacy is vested, it seems that maintenance will be ordered, though none is directed by the will, and though the interest is directed to be accumulated.³ And though a sum be directed to be paid periodically for maintenance, until the time for the payment of the portion, the child will be entitled to a proportionate part during the interval between the last periodical payment and that time.⁴ And when no maintenance is given, an infant child of the testator is entitled to the interest even of a legacy contingent on his attaining twenty-one.⁵ 804.

The Court has power to charge reversionary property of infants with money required for their maintenance.

¹ St. § 1354.

² See St. § 1354, 1354 a, 1354 b.*

³ 2 Sp. 462.

⁴ 2 Sp. 462.

⁵ *Chambers v. Goldwin*, 11 Ves. 1; *Martin v. Martin*, L. R. 1 Eq. 369.

(a) See stat. 23 and 24 Vict. c. 145, s. 26.

* Schouler's Dom. Rel. 322, *et seq.*

nance, even where some of them may never become entitled to possession.¹ 805.

The Court is governed by a regard to the circumstances and state of the family to which the infant belongs, in respect to the allowance of any maintenance at all, and to the amount of such allowance. So that, although there may be a trust for maintenance under which the whole income may be applied, yet the Court will not apply more of it than necessary, where the infants have other sources of income.² And if the father is able to maintain the infant out of his own property, the Court will ordinarily withhold all allowance from the property or income of the infant for the maintenance of the latter, even though there may be a power (as distinguished from a trust), in the settlement or will, at the discretion of the trustees, to appoint part of the income for the purpose of his maintenance and education.³ But if there is a contract on marriage amounting to a trust that property shall be applied for the maintenance and education of the children, the property must be applied, without reference to the ability of the father to maintain and educate them. And in the case of a legacy given by a stranger, the interest of it may be so given or di-

¹ *De Witte v. Palin*, L. R. 14 Eq. 251.

² *White v. Grang*, 18 Beav. 571.*

³ St. § 1354 a, and note; 2 Sp. 462, 466.†

* *Schouler's Dom. Rel.* 323, *et seq.* In *re Kane*, 2 Barb. Ch. 375.

† *Schouler's Dom. Rel.* 322.

rected to be applied, as to be in substance a gift to the father, or rather for his benefit.¹ And if the infant is an eldest son, and the younger children have no provision made for them, an ample allowance will be decreed to him, in order that the younger children may be maintained. And the Court will act in a similar way where the father or mother of the infant is in distress or narrow circumstances.² 806.

The Court, however, in allowing maintenance, almost always confines it within the income of the property. But where the property is small, and more means are necessary for the due maintenance of the infant, part of the capital will sometimes be directed to be applied for the purpose. But without the express sanction of the Court, a trustee or guardian should not so apply any part of the capital.³ 807.

The words "maintenance, education, and bringing up," standing together, have reference to minority only. But where the interest of a fund is directed to be applied for the "maintenance and education" of a person, though at the time an infant, he is, generally speaking, entitled to the interest during his life. "Education" includes maintenance. Where maintenance is given during minority, as a general rule it

¹ 2 Sp. 466-8.*

² St. § 1355; 2 Sp. 461, 462.

³ St. § 1355; 2 Sp. 461.†

* But it is clear that where a fund is given as a mere bounty, notwithstanding a provision for maintenance, the father, if of ability, must support the child. See Schouler's Dom. Rel. and cases cited.

† Schouler's Dom. Rel. 327.

does not cease on the marriage of the child.¹ A direction that the testator's daughter shall reside with and be maintained by his son, so long as she shall remain single, only entitles her to maintenance so long as he lives, and so long as she chooses to reside with him.² 808.

Where the income of property is given to the mother for the maintenance of herself and her children, she is to receive the whole income, and maintain the children out of it, so long as they form part of her family; but when they are forisfamiliaried, as by marriage, they lose the right to maintenance.³ 809.

Where infants resident here become entitled to personal property, under the decree of a foreign tribunal, it will be administered for their benefit here, just as any other property.⁴ 810.

Property decreed to infants by foreign Court.

If a man marries a ward of Court, without the consent of the Court, even though with the consent of the guardian, he, and all others concerned in aiding and abetting the act, are treated as guilty of a contempt of Court; and even though he was ignorant that she was a ward of the Court, he is deemed guilty of a contempt.⁵ 811.

Marriage of a ward of the Court without its consent.

Where the Court appoints a guardian or committee in the nature of a guardian, to have the care of an infant, it is accustomed to require the guardian or committee to give

Recognition that a ward of Court shall not marry.

¹ 2 Sp. 460; Carr v. Living (No. 2), 33 Beav. 474.

² Wilson v. Bell, L. R. 4 Ch. Ap. 581.

³ 2 Sp. 461.

⁴ 2 Sp. 13, 14.

⁵ St. § 1358.

a recognizance that the infant shall not marry without the leave of the Court; so that if the infant should marry even without the knowledge or neglect of the guardian or committee, yet the recognizance would in strictness be forfeited, whatever favor the Court might think fit to show to the party, when he should appear to have been in no fault.¹ 812.

Interdic-
tion of in-
tended mar-
riage of a
ward of
Court, and
of addresses.

Where there is reason to suspect an improvident marriage without its sanction, the Court will, by an injunction, not only interdict the marriage, but also all communications between the ward and the admirer; and if the guardian is suspected of any connivance, the Court will substitute a committee in his stead.² 813.

Settlement
on a ward
of Court.

In case of an offer to marry a ward of Court, the Court will inquire and ascertain whether the match is a suitable one, and what settlement ought to be made on the marriage; and it is not competent to the parties, by delaying the marriage until the wife has come of age, to defeat the settlement approved by the Court.³ And when a man has been committed for a contempt in marrying a ward of Court without its sanction, he will not be discharged until he has actually made such a settlement as shall have been deemed proper by the Court. And this will be the case even where the ward has subsequently come of age, and is ready to waive her right to a settlement; for the Court will protect her against

¹ St. § 1359.

² St. § 1360.

³ St. § 499.

her own indiscretion and the undue influence of her husband.¹ 814.

Where a settlement is executed a few days after the lady, who has been a ward of Court, has attained her majority, and is pursuant to proposals made a very short time before she attained her majority, and is such that the Court would not approve thereof, it will be rectified, if at least it was the work of her friends, and she was not made to understand its effect, and called upon to exercise her judgment upon it.² 815.

If a ward of Court marries a few days after majority, the Court will decline to order her fortune to be paid out of Court, on her consent, and will refuse to do more than order payment of the income to the husband during their joint lives, or until further order, without prejudice to any question, and with liberty to apply.³ 816.

The Court has no power to order a settlement of the property of an infant not being a ward of Court, who has married after attaining the age at which she is capable of contracting a marriage.⁴ 817.

Settlement on an infant who is not a ward of Court.

¹ St. § 1361.*

² *Money v. Money*, 3 Drew. 256.

³ *Biddle v. Jackson*, 26 Beav. 282.

⁴ *In re Potter*, L. R. 7 Eq. 484.

* The doctrine of the English Courts of Chancery in regard to interference in securing proper marriage for infant wards or preventing improper ones, does not obtain to the same extent in this country, and may be said to have no application to Courts of Chancery in this country. See *Jeremy Eq. Jur. B. 1 Ch. 5, § 33*, pp. 230, 231; *Kenny v. Udall*, 5 Johns. Ch. 464, 473. *Schouler's Dom. Rel.* 516, 517.

Control
over guar-
dians and
others for
the benefit
of infants.

The Court will exercise a vigilant care over infants in the management of their property; and will also aid and protect infants against other persons than those who are guardians; such, for instance, as intruders upon the estate.¹ 818.

Cancell-
ation of ap-
prentice-
ship.

The Court has no jurisdiction to order the cancellation of articles of apprenticeship and the return of a portion of the premium, on the ground of the wrongful refusal of the master to continue to instruct his apprentice in his trade, according to his agreement.² 819.

¹ St. § 1356.(a)

² Webb v. England, 29 Beav. 44.*

(a) On the subject of infants, see 1 Will. IV, cc. 60, 65; 13 and 14 Vict. c. 60; 15 and 16 Vict. c. 55; 19 and 20 Vict. c. 120; 37 and 38 Vict. c. 62.

* St. Eq. Jur. 473a.

CHAPTER II.

OF MARRIED WOMEN.

AT the Common Law, the being or legal existence of the wife, for almost all purposes, is considered as merged in that of the husband.¹ But Courts of Equity, in many respects, treat husband and wife as distinct persons.² And this distinctness of interest has been greatly extended by the stat. 33 and 34 Vict. c. 93. 820.

Common
Law doc-
trine.
Division of
the subject
of the doc-
trines of
Equity as
to married
women.

In illustration of this, let us consider,

- I. The powers which they have, in Equity, of contracting with, and giving and granting to, each other.
- II. The wife's pin-money and paraphernalia.
- III. The wife's separate estate.
- IV. The equity of the wife to a settlement or maintenance out of her own property.
- V. Some points respecting deeds of separation. 821.

¹ See St. § 1367.

² St. § 1368.

SECTION I.

THE POWERS WHICH HUSBAND AND WIFE HAVE IN
EQUITY OF CONTRACTING WITH, AND GIVING AND
GRANTING TO, EACH OTHER.

I. I. Contracts before marriage. At Law, contracts made between husband and wife before marriage, are extinguished by the marriage, if they are for debts or things due *in præsenti*, or at or on a future time or event which may occur during, and not after the determination of, the coverture. But Courts of Equity, although they generally follow the same doctrine, will enforce such contracts, where it would be in furtherance of the manifest intention and object of the parties to do so; as in the case of an agreement by husband and wife for the mutual settlement of their estate, or of the estate of either of them on the other, on the marriage, even without the intervention of trustees.¹ 822.

II. II. Contracts after marriage. Contracts made between husband and wife, after marriage, are a mere nullity at Common Law; but under peculiar circumstances, they will be enforced in Equity where they are of a reasonable nature. Thus, if the husband should contract with his wife, for good reasons, that she should separately possess and enjoy property bequeathed to her, the contract would be upheld in

¹ St. § 1370, 1371.

Equity.¹ And by the stat. 33 and 34 Vict. c. 93, s. 11, it is enacted that "a married woman may maintain an action, in her own name, for the recovery of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property." So the wife may become a creditor of her husband; and her rights, as such, will be enforced against him and his representatives. Thus, if a wife should raise money out of her estate, to answer his necessities, whatever be the mode adopted to carry that purpose into effect, she would in Equity be entitled to reimbursement out of his estate.² But a contract by the husband to transfer his rights and duties in reference to his children to his wife, is contrary to public policy, and will not be enforced;³

¹ See St. § 1372; *Hewison v. Negus*, 16 Beav. 594; *Anderson v. Abbott*, 23 Beav. 457.*

² St. § 1373.

³ *Vansittart v. Vansittart*, 4 K. & J. 62; *Walrond v. Walrond*, Johns. 18.†

* *Bleeker v. Bingham*, 3 Paige, Ch. 246; *Tyler Inf. and Cov.* 329, 330. A direct gift of property by the husband to the wife is void at Law, but will be enforced in Equity so far as they are concerned, and to constitute a voluntary gift between parties, it must be complete, or Courts of Equity will not enforce it; the intention to give must clearly appear, and that intention must have been executed. *Schouler's Dom. Rel.* 283, 284, and cases cited.

† And a certain portion of the earnings and private property of a wife may be kept distinct in Equity, and secured against a husband and his creditors. Land purchased in the name of a wife with her money, whether in her possession or her husband's, is protected from her husband and his creditors. If a husband

unless his conduct has been such, that the Court of Chancery would remove the children from his custody.¹
823.

III. Gifts
and grants
after mar-
riage.

III. Gifts and grants too, whether express or implied, by a husband to his wife, after marriage, although ordinarily void at Law, will be enforced in Equity, if they are of a reasonable nature, and there is no ground to suspect fraud. Thus, gifts made by the husband to the wife to purchase clothes or personal ornaments, or for her separate expenditure, and personal savings and profits made by her in her domestic management which the husband allows her to apply to her own separate use, will be held to vest in her, as against her husband, but not as against his creditors, an unimpeachable right of property therein, so that they may be treated as her separate estate, if such gifts are established by clear and incontrovertible evidence.² If a husband makes presents of chattels to his wife, even verbally, and without words of separate use, her right to them will be enforced against his residuary legatee, if the gift is proved by the testimony of any one who heard him use words of gift, or to whom he afterwards stated that he had given the chattels, or that they were hers. But the

¹ Swift v. Swift, 34 Beav. 266.

² St. § 1374, 1375.

repays money borrowed of his wife, or conveys to her property in satisfaction of a just claim, her title will be supported. St. Eq. Jur. § 1372, note, and authorities cited. See also for other instances in which Courts of Equity have sustained a postnuptial contract in favor of the wife and against creditors, Schouler's Dom. Rel. 282, note 1, and cases cited.

Court will not act upon the unsupported oath of the wife.¹ 824.

If a husband places money in a bank in the name of his wife, without any indication that he thereby intends an advancement or gift to her separate use, it will only amount to a contract between him and the bankers that they shall or will honor the checks of either husband or wife; and the money will remain the property of the husband.² 825.

SECTION II.

PIN-MONEY AND PARAPHERNALIA.

1. PIN-MONEY is not deemed to be an absolute gift; it is not considered like money I. Pin-money. set apart for the sole and separate use of the wife during coverture; but it is a sum payable by the husband to the wife, in virtue of a particular arrangement, and to be applied by the wife in attiring her person in a manner suitable to the rank of her husband, and in defraying other personal expenses—a sum allowed to save the trouble of a constant recourse by the wife to the husband, in order to meet her ordinary personal expenses.³ 826.

¹ *Grant v. Grant*, 34 Beav. 623.

² *Lloyd v. Pughe*, L. R. 8 Ch. Ap. 88.

³ See St. § 1375 a, and note; 2 Sp. 500, 501.*

* Schouler's Dom. Rel. 240.

Arrears
thereof.

Such being the peculiar nature of this provision, the wife cannot make a sweeping disposition of it, as she can of her separate estate. And Courts of Equity refuse to call upon the husband to pay beyond the arrears of a year, although stipulated for by a marriage settlement. For, setting aside the presumed satisfaction by acquiescence, the money is meant to dress the wife during the year, so as to keep up the dignity of the husband, and not for the purpose of accumulation. And, on the same principle, the personal representatives of the wife are not allowed to make any claim even for arrears of a year.¹ 827.

II. Para-
phernalia.

II. The wife's paraphernalia are personal apparel and ornaments of the wife, suitable to her rank and condition in life.² Old family jewels, though worn by the wife, do not constitute part of her paraphernalia, unless she has acquired them by gift or bequest.³ 828.

Rule of Law
respecting
them.

At Law, the husband may, in his lifetime, but not by his will, dispose of the wife's paraphernalia, with the exception of necessary apparel. And they are liable to the claims of creditors, with the like exception. And if the articles were given by the husband, either before or after marriage, Courts of Equity fully recognize this right of the husband and

Rule of
Equity,
where they
were given
by the
husband,

¹ St. § 1375 a, and note; 2 Sp. 501; 1 Lead. Cas. Eq., 3d ed. 479.*

² St. § 1376.

³ *Jervoise v. Jervoise*, 17 Beav. 566.

* Tyler Inf. & Cov. 297, *et seq.*

his creditors, instead of treating the articles as absolute gifts to the wife, as her own separate property; although, in the case of creditors claiming against the assets of the husband, the personal assets of the husband will be marshalled against his representatives in favor of the widow. But if the articles were bestowed on the wife by any one else, they will be deemed absolute gifts to her separate use; and then, if received with the consent of the husband, neither he nor his creditors can dispose of them.¹

or where
given by
any one
else.

829.

SECTION III.

THE WIFE'S SEPARATE ESTATE.(a)

I. WITH regard to the means of acquiring a separate estate—

I. Means of acquiring it.

1. Whenever real or personal estate is given, granted, devised to, or settled on a woman, either with or without the intervention of trustees, whether after marriage, or as a provision on marriage, or not in contemplation of im-

1. By gift, grant, devise, or settlement.

¹ St. § 1376, 1377; 1 Lead. Cas. Eq., 3d ed. 480.*

(a) On this subject see *Hulme v. Tennant*, 1 Lead. Cas. Eq., 2d ed. 394, *et seq.*

For discussion of the American doctrine in the different States, see Schouler's Dom. Rel. 200, *et seq.*

* Schouler's Dom. Rel. 174, 175.

diate marriage, and whether by her husband or by a mere stranger, it will be deemed separate estate, if it clearly appears that the property was intended for her separate use.¹ Thus, a bequest to a married woman, "for her own use, and at her own disposal," has been held to be a bequest to her separate use. So money paid to the husband "for the livelihood of the wife" has been construed a gift to her separate use.² But where the expressions do not clearly show that the husband is to be excluded from his marital rights, the wife will not take for her separate use. Thus, in the case of a direction to pay money into her own proper hands "for her own use and benefit," it has been held that although the money is to be for her own use, yet there is nothing in that inconsistent with its being subject to the husband's marital rights.³ And a direct gift to a woman who is either single or will become discoverable on the testator's death, for her sole use and benefit, does not create a separate estate⁴ unless aided by other expressions in the will or other circumstances; such as the fact that the instrument shows that the

¹ St. § 1380, 1381, 1384; 2 Sp. 502, 507-511; *Goulder v. Camm*, 1 D. F. & J. 146.*

² St. § 1382; 2 Sp. 507.†

³ St. § 1383; 2 Sp. 508-511. See also *Spirett v. Willows*, 3 D. J. & S. 293.

⁴ *Gilbert v. Lewis*, 1 D. J. & S. 38; and see *Lewis v. Mathews*, L. R. 2 Eq. 177.‡

* Tyler's Inf. and Cov. § 300, 301.

† Schouler's Dom. Rel. 202, 203.

‡ Schouler's Dom. Rel. 200, *et seq.*

marriage of the person spoken of was contemplated by the author of it.¹ But a gift, by way of trust, for her sole benefit, to a married woman, does create a separate estate.² 830.

2. By the custom of London a married woman may carry on trade within the city, as a sole trader, and be liable as such. But, independently of any such custom, if it is agreed between the husband and wife, before marriage, that the wife shall be allowed to carry on a separate trade, such an agreement will be maintained at Law, against the husband; and being an agreement for valuable consideration, namely, that of the intended marriage, it will also be maintained at Law against his creditors. And if such an agreement is made after marriage, and trustees are interposed, it will be maintained at Law against the husband; and if it is on valuable consideration, against his creditors also; for, in such case, the wife's trustees will, at Law, be entitled to the property assigned, and to the increase and profits thereof, and she will be considered at Law as their agent, and her possession as their possession. The trustees, however, will be regarded in Equity as holding such property, and receiving the increase and profits thereof, for the sole and separate use of the wife. And thus in such cases where trustees are interposed, the beneficial interest in the property, and the increase and profits thereof, are secured to the wife

2. By carrying on a separate trade in London: or even elsewhere, by agreement before marriage:

by agreement after marriage:

¹ In re Tarsey's Trust, L. R. 1 Eq. 561.

² Green v. Britton, 1 D. J. & S. 649.

3. By the stat. 20 and 21 Vict. c. 85, s. 21, and 21 and 22 Vict. c. 108, s. 8, if a wife is deserted by her husband, she may obtain an order of protection of her property against her husband and his creditors; and by s. 25 of the former Act, if judicially separated, she is to be deemed a feme sole as regards her property; (a) and in case of subsequent cohabitation, it shall be held to her separate use, subject to any agreement. 832.

3. By an order of protection or by a judicial separation.

Where the property is vested in trustees, care must be taken that the negotiations are not carried on in the name of the wife, as by taking notes or other securities in her name; for then they will, at Law, be held to belong to the husband, although it will be otherwise in Equity.¹ 833.

4. By the stat. 33 and 34 Vict. c. 93, it is enacted as follows:

4. Under the stat. 33 and 34 Vict. c. 93.

"The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and

Earnings of married women to be deemed their own property.

¹ St. § 1386.

American system of positive law on the rights of married women now in force, is admirably outlined and briefly summed up in Schouler's Dom. Rel. 212, note.

(a) See *In re Insole*, L. R. 1 Eq. 470.

by the joint operation of Law and Equity. By the operation of Law, the legal estate is vested in the trustees, and taken out of the power of the husband. By the operation of Equity, the beneficial interest is vested in, and secured to, the wife, against her husband, and, if the agreement is for valuable consideration, against his creditors also. But even where there are no trustees interposed, such an agreement has the force, in Equity, of creating a separate estate for the wife, and securing it against the husband; and, if the agreement is for valuable consideration, against his creditors also.

And this is the case even though it be a mere implied agreement. So that if the husband should permit his wife, after the marriage, to carry on business on her sole and separate account, all her earnings in the trade will be her separate property. And if a husband should desert his wife, and she should be enabled, by the aid of her friends, to carry on a separate trade, her earnings in such trade will be enforced in Equity against her husband, independently of the stat. 20 and 21 Vict. c. 85, ss. 21, 25.¹ 831.

even though the agreement be merely implied.

¹ See St. § 1385-1387; 2 Sp. 503.*

* The rule seems to be well established in the United States that the husband, in pursuance of a marriage contract, antenuptial or postnuptial, may confer upon his wife the right to trade for her exclusive benefit. Schouler's Dom. Rel. 245, *et seq.* But a business carried on by the husband and wife in co-operation, his labor and skill meeting with hers, must be considered as his business so far as his creditors are concerned. *Id.* 247. The recent Married Woman's Acts in the United States have enlarged and more fully established the wife's power to trade on her own account. The

3. By the stat. 20 and 21 Vict. c. 85, s. 21, and 21 and 22 Vict. c. 108, s. 8, if a wife is deserted by her husband, she may obtain an order of protection of her property against her husband and his creditors; and by s. 25 of the former Act, if judicially separated, she is to be deemed a feme sole as regards her property; (a) and in case of subsequent cohabitation, it shall be held to her separate use, subject to any agreement. 832.

3. By an order of protection or by a judicial separation.

Where the property is vested in trustees, care must be taken that the negotiations are not carried on in the name of the wife, as by taking notes or other securities in her name; for then they will, at Law, be held to belong to the husband, although it will be otherwise in Equity.¹ 833.

4. By the stat. 33 and 34 Vict. c. 93, it is enacted as follows:

4. Under the stat. 33 and 34 Vict. c. 93.

"The wages and earnings of any married woman acquired or gained by her after the passing of this Act in any employment, occupation, or trade in which she is engaged or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and

Earnings of married women to be deemed their own property.

¹ St. § 1386.

American system of positive law on the rights of married women now in force, is admirably outlined and briefly summed up in Schouler's Dom. Rel. 212, note.

(a) See *In re Insole*, L. R. 1 Eq. 470.

taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property " (s. 1). 834.

Deposits in
savings
banks by a
married
woman.

"Notwithstanding any provision to the contrary in the Act of the 10th year of Geo. IV, chap. 24, enabling the Commissioners for the Reduction of the National Debt to grant life annuities and annuities for terms of years, or in the Acts relating to savings banks and post-office savings banks, any deposit hereafter made and any annuity granted by the said Commissioners under any of the said Acts in the name of a married woman, or in the name of a woman who may marry after such deposit or grant, shall be deemed to be the separate property of such woman, and the same shall be accounted for and paid to her as if she were an unmarried woman; provided that if any such deposit is made by, or such annuity granted to, a married woman by means of moneys of her husband without his consent, the Court may, upon an application under sect. 9 of this Act, order such deposit or annuity or any part thereof to be paid to the husband" (s. 2). 835.

A married
woman's
property in
the funds.

"Any married woman, or any woman about to be married, may apply to the Governor and Company of the Bank of England, or to the Governor and Company of the Bank of Ireland, by a form to be provided by the governor of each of the said banks and companies for

that purpose, that any sum forming part of the public stocks and funds, and not being less than £20, to which the woman so applying is entitled, or which she is about to acquire, may be transferred to or made to stand in the books of the governor and company to whom such application is made in the name or intended name of the woman as a married woman entitled to her separate use, and on such sum being entered in the books of the said governor and company accordingly the same shall be deemed to be the separate property of such woman, and shall be transferred and the dividends paid as if she were an unmarried woman; provided that if any such investment in the funds is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under sect. 9 of this Act, order such investment and the dividends thereof, or any part thereof, to be transferred and paid to the husband" (s. 3). 836.

"Any married woman, or any woman about to be married, may apply in writing to the directors or managers of any incorporated or joint-stock company that any fully paid-up shares, or any debenture or debenture stock, or any stock of such company, to the holding of which no liability is attached, and to which the woman so applying is entitled, may be registered in the books of the said company in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such directors or managers to register such shares or stock accordingly, and the same upon being so registered shall be deemed

A married woman's property in a joint stock company.

to be the separate property of such woman, and shall be transferred and the dividends and profits paid as if she were an unmarried woman; provided that if any such investment as last mentioned is made by a married woman by means of moneys of her husband without his consent, the Court may, upon an application under sect. 9 of this Act, order such investment and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband" (s. 4). 837.

A married woman's property in a society. "Any married woman, or any woman about to be married, may apply in writing to the committee of management of any industrial and provident society, or to the trustees of any friendly society, benefit building society, or loan society, duly registered, certified, or enrolled under the Acts relating to such societies respectively, that any share, benefit, debenture, right, or claim whatsoever in, to, or upon the funds of such society, to the holding of which share, benefit, or debenture, no liability is attached, and to which the woman so applying is entitled, may be entered in the books of the society in the name or intended name of the woman as a married woman entitled to her separate use, and it shall be the duty of such committee or trustees to cause the same to be so entered, and thereupon such share, benefit, debenture, right, or claim shall be deemed to be the separate property of such woman, and shall be transferable and payable with all dividends and profits thereon as if she were an unmarried woman; provided that if any such share, benefit, debenture, right, or claim has been obtained by a married woman by

means of moneys of her husband without his consent, the Court may, upon an application under sect. 9 of this Act, order the same and the dividends and profits thereon, or any part thereof, to be transferred and paid to the husband" (s. 5). 838.

"Nothing hereinbefore contained in reference to moneys deposited in or annuities granted by savings banks or moneys invested in the funds or in shares or stock of any company shall as against creditors of the husband give validity to any deposit or investment of money of the husband made in fraud of such creditors, and any moneys so deposited or invested may be followed as if this Act had not passed" (s. 6). 839.

Deposit of moneys in fraud of creditors invalid.

"Where any woman married after the passing of this Act shall during her marriage become entitled to any personal property as next of kin or one of the next of kin of an intestate, or to any sum of money not exceeding £200 under any deed or will, such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to the woman for her separate use, and her receipts alone shall be a good discharge for the same" (s. 7). 840.

Personal property coming to a married woman.

"Where any freehold, copyhold, or customaryhold property shall descend upon any woman married after the passing of this Act as heiress or co-heiress of an intestate, the rents and profits of such property shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate

Real property coming to a married woman.

use, and her receipts alone shall be a good discharge for the same" (s. 8). 841.

How questions as to ownership of property to be settled.

"In any question between husband and wife as to property declared by this Act to be the separate property of the wife, either party may apply by summons or motion in a summary way either to the Court of Chancery in England or Ireland, according as such property is in England or Ireland, or in England (irrespective of the value of the property) the judge of the county court of the district in which either party resides, and thereupon the judge may make such order, direct such inquiry, and award such costs as he shall think fit; provided that any order made by such judge shall be subject to appeal in the same manner as the order of the same judge made in a pending suit or on an equitable plaint would have been, and the judge may, if either party so require, hear the application in his private room" (s. 9). 842.

Married woman may effect policy of insurance.

"A married woman may effect a policy of insurance upon her own life or the life of her husband for her separate use, and the same and all benefit thereof, if expressed on the face of it to be so effected, shall inure accordingly, and the contract in such policy shall be as valid as if made with an unmarried woman" (s. 10, 1st par.). 843.

As to insurance of a husband for benefit of his wife.

"A policy of insurance effected by any married man on his own life, and expressed upon the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall inure and be deemed a trust for the

benefit of his wife for her separate use, and of his children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband or to his creditors, or form part of his estate. When the sum secured by the policy becomes payable, or at any time previously, a trustee thereof may be appointed by the Court of Chancery in England or in Ireland, according as the policy of insurance was effected in England or in Ireland, or in England by the judge of the county court of the district, or in Ireland by the chairman of the Civil Bill Court of the division of the county in which the insurance office is situated, and the receipt of such trustee shall be a good discharge to the office. If it shall be proved that the policy was effected and premiums paid by the husband with intent to defraud his creditors, they shall be entitled to receive out of the sum secured an amount equal to the premiums so paid" (s. 10, 2d par.). 844.

"A married woman may maintain an action in her own name for the recovery of any wages, earnings, money, and property by this Act declared to be her separate property, or of any property belonging to her before marriage, and which her husband shall, by writing under his hand, have agreed with her shall belong to her after marriage as her separate property, and she shall have in her own name the same remedies, both civil and criminal, against all persons whomsoever, for the protection and security of such wages, earnings, money, and property, and of any chattels or other property purchased or ob-

Married women may maintain an action.

tained by means thereof for her own use, as if such wages, earnings, money, chattels, and property belonged to her as an unmarried woman ; and in any indictment or other proceeding it shall be sufficient to allege such wages, earnings, money, chattels, and property to be her property" (s. 11). 845.

II. Wife's power of disposing of separate estate where it has arisen from a prenuptial agreement.

II. As to the wife's power of disposing of her separate estate, all prenuptial agreements for securing to the wife separate personal property, will confer on her, in Equity, unless the contrary is expressly stipulated or implied, the same power of disposing of such separate property, by will or otherwise, as an unmarried woman would have.¹ 846.

Where it has arisen from a post-nuptial agreement of the husband.

With respect to her power of disposing of her separate property, where no trustee is interposed, and it rests merely on a post-nuptial agreement of the husband, if the property consists of personalty, or an estate for life in real property, her disposal thereof can affect her husband's rights alone; and therefore his assent is conclusive upon him. And if real property is settled upon her in fee in trust for her separate use, without any special power of appointment, she may dispose of or charge the rents and profits accruing during her life. But it was formerly held that she could only dispose of the inheritance by the ordinary means by which married women dispose of their real property; because,

¹ St. § 1390; 2 Sp. 506, 507.*

* Tyler's Inf. and Cov. § 306, 307.

in regard to real estate, her own heirs are or might be affected in their interest by descent.¹ 847.

And where an estate of inheritance is given her by a third person, during the coverture, or as it seems, before coverture, for her separate use, it was formerly held that she could not dispose of it, except by these means (that is, by a deed duly acknowledged under the Fines and Recoveries Act), or under a power; but that if such a power is expressly given her, she might dispose of the estate, even though there are no trustees interposed.² 848.

Where it is given by a third person before or during the coverture.

It has been subsequently held, however, that she may, like a *feme sole*, by virtue of her ownership, dispose, by deed or will, of an estate of inheritance settled

¹ St. § 1391; 2 Sp. 504, 513; and see remarks of V.-C. Kinderley, in *Moore v. Morris*, 4 Drew. 37-8.*

² St. § 1388, 1392; 2 Sp. 504, 507; *Harris v. Mott*. 14 Beav. 169; *Lechmere v. Brotheridge*, 32 Beav. 353.

* The weight of American authorities, where property is settled to the separate use of a *feme covert*, is that she is to be regarded as a *feme sole* as to such separate estate to the extent of her disposition of it without assent of her trustee, unless she is specially restrained by the instrument under which she acquires such separate estate, and although a particular mode of disposition be pointed out in the instrument, it will not preclude her adopting another mode unless there are negative words restraining her power, except in the very mode pointed out. Schouler's Dom. Rel. 227; Tyler's Inf. and Coverture, § 314, and authorities there cited; St. Eq. Jur. 1832a, note; *Methodist Episcopal Church v. Jacques*, 1 Johns. Ch. 450; 3 Ib. 77.

to her separate use, even though a special power of appointment be given her.¹ 849.

Where personal property, whether in possession or reversion, or a life interest in real property, is given by a third person, for the separate use of a married woman, she has, in effect, a full power to dispose of it, unless, from the words of the gift, it appears, beyond reasonable doubt, to have been the intention of the giver that this absolute power should not exist.² 850.

Restrictions against alienation or anticipation. A mere prohibition of alienation or anticipation is void against a man, or a woman while she is unmarried.³ And it is void when annexed to a gift of real estate in fee or for life to a woman, even though at the time married, if such gift is not for her separate use.⁴ But a gift either of real estate, whether in fee or for life, or of personal estate, to a woman for her separate use, even though she be unmarried at the time, may be accompanied by restrictions against alienation or anticipation.⁵ These, however, will not be inferred from any ambiguous expressions; they must either be contained in express words or be deducible by plain implication.⁶ 851.

¹ Taylor v. Meads, 34 L. J. (Ch.) 203; Pride v. Bubb, L. R. 7 Ch. Ap. 64.

² See St. § 1393, 1394; 2 Sp. 513; Lechmere v. Brotheridge, 32 Beav. 353.

³ See 2 Sp. 520.

⁴ See 2 Sp. 521.

⁵ St. § 1382 a, 1384; 2 Sp. 511, 521, 522.

⁶ See 2 Sp. 512, 522; and remarks of V.-C. Kindersley, in Moore v. Morris, 4 Drew. 37.*

* Schouler's Dom. Rel. 219.

The separate-use clause, either with or without a restriction against anticipation, will be confined to the then existing or then intended coverture, or will be also applied to other covertures, according to the apparent intention.¹ If it appears to have been intended that every husband shall be excluded, and that the clause against anticipation shall operate during every successive coverture, in such case, although the woman, while single, or when and as often as she becomes a widow, has the absolute dominion over the property, yet if she do not dispose of the property so as to put an end to the trust, and she marry again, the separate-use clause and the restriction against alienation will be revived during such and every other subsequent coverture, so long as the property is held upon the original trust.² 852.

Operation of separate-use clause and restriction against anticipation.

A Court of Equity has no power to release a separate estate from a restraint on anticipation or alienation, even where it would manifestly be for the benefit of the married woman; as where a legacy of considerable amount is given to her on condition that she convey away a separate estate of inconsiderable value.³ 853.

Where the wife bestows her separate property upon her husband, Courts of Equity examine the transaction with an anxious

Gifts to the husband by the wife.

¹ 2 Sp. 524; *In re Gaffee*, 1 Mac. & G. 541; *Moore v. Morris*, 4 Drew. 33; *Hawkes v. Hubback*, L. R. 11 Eq. 5.

² 2 Sp. 524.

³ *Robinson v. Wheelwright*, 21 Beav. 214; 6 D. M. & G. 535.

dread of undue marital influence; and if they are required to give sanction or effect to it, they will examine the wife in Court, and adopt other precautions to ascertain her unbiassed wishes.¹ 854.

Where the husband, with the consent of the wife, is in the habit of receiving the income of her separate estate, it is regarded as showing her voluntary choice thus to dispose of it for the benefit of the family; and separate money of the wife paid to the husband or placed to his account by her authority or with her concurrence, cannot be recalled.² And the income of separate estate, where the wife is of unsound mind, will be paid to the husband for her support, if he is unable to maintain her.³ 855.

III. Liability of separate estate.

III. As to the liability of the wife's separate estate to her contracts, debts, and charges (except under the stat. 20 and 21 Vict. c. 85, s. 26, which relates to women judicially separated), a woman cannot render herself or her property liable, at Law, for any contract, debt, or other charge created by her during the coverture, not even for necessities. But a married woman having separate estate (except so far as she is restrained from anticipation), being considered in Equity as a feme sole, as regards the separate estate, with respect to the capacity of enjoying it, she is likewise considered as a feme sole with respect

¹ St. § 1395; 2 Sp. 514.

² St. § 1396; 2 Sp. 514; 1 Lead. Cas. Eq., 2d ed. 411; *Caton v. Rideout*, 1 Mac. & G. 603; *Gardner v. Gardner*, 1 Gif. 126.

³ 2 Sp. 525.

to the capacity of charging the estate with debts or engagements. No personal decree, however, can be made against her; the Court can only affect her separate estate in the hands of her trustees; she cannot bind her person at all, or her property generally, but only her separate property.¹ This will be held liable for all the debts, charges, and incumbrances which she expressly charges, or which, judging from the nature thereof, it may be fairly inferred that she intended, or which she ought to be deemed to have intended, to charge on her separate estate, and for her breaches of trust, except so far as she is prevented by being restrained from anticipation.² And hence, if she gives a promissory note, or an acceptance, or a bond to pay her own debts, or if she joins in a bond with her husband to pay his debts, without reference to her separate estate, it shall be intended as an application *pro tanto* of her separate estate; because the security must have been executed with the intention that it should operate in some way, and it can have no operation except as against her separate estate. And if she employs a lawyer, upon her own responsibility, or an agent to raise money on the credit of her name, her separate

¹ St. § 1379, and note, and 1400, note; 2 Sp. 324, 325, 504, 515-518; see remarks of Kindersley, V.-C., in *Vaughan v. Vanderstegen*, 2 Drew. 179-184; *Blatchford v. Woolley*, 2 Dr. & Sm. 204.

² *Clive v. Carew*, 1 Johns. & H. 199; and see *Johnson v. Gallagher*, 3 D. F. & J. 494; *In re Leeds Banking Co.*, L. R. 3 Eq. 781; *Picard v. Hine*, L. R. 5 Ch. Ap. 274; *McHenry v. Davies*, L. R. 10 Eq. 88; *London Chartered Bank of Australia v. Lemprière*, L. R. 4 P. C. 572.

estate will be liable, from the nature of the engagement. But it would seem that her separate estate would not be liable for debts of an ordinary character, for which she gives no security, unless, at least, she is divorced or judicially separated from her husband. For she may, and in general must, be presumed to have intended that these should be paid by her husband. If, indeed, the contrary doctrine were held, a wife who has a separate estate would in many cases be disinclined to take upon herself her ordinary domestic duties, fearing lest her separate estate should be exhausted by defraying the ordinary expenses of the house; or the creation of a separate estate would often be rendered unavailing, by her encountering that risk. And in no case will the Court charge the *corpus* of the separate estate in respect of her general obligations.¹ It has been held that the separate estate is not

¹ See St. § 1398-1401, and notes; 2 Sp. 515, 516, and notes; *McHenry v. Davies*, L. R. 10 Eq. 88; *London Chartered Bank of Australia v. Lemprière*, L. R. 4 P. C. 572.*

* The American doctrine of the wife's power to charge her separate estate, independently of the married women's acts, has fluctuated somewhat as have the English cases. For a full discussion of the liability of a married woman's separate estate for her debts, etc., in this country, see Schouler's *Dom. Rel.* 227, *et seq.*; also *Hulme v. Tennant*, 1 White and Tudor's *Lead. Cas. Eq.*, 4th Am. ed., part ii, 735, *et seq.*, and authorities there considered.

"The principle adopted by some of the Courts of this country in regard to the power of a *feme covert* over her separate estate, is in many respects opposite to that which prevails in England. For while the English cases hold that she is, in respect to her separate estate, to be regarded as a *feme sole*, with all the powers which belong to that character, and that her note or bond, or other obli-

liable for the breaches of trust or other torts of the married woman unconnected with such separate estate.

gation will bind her estate, the rule adopted in many of the American Courts is, that a married woman has no power in relation to her separate estate but such as has been expressly given to her, and that her note or bond will not charge her separate estate, except where a provision for that purpose is contained in the instrument creating the separate estate." *Ibid.*, *Hulme v. Tenant*.

The subject was considered at length in *Yale v. Dederer*, 21 Barb. 286; 18 N. Y. 265; 22 N. Y. 469; which was cited and followed in *Willard v. Eastham*, 15 Gray, 328; and the rule as now settled in New York and Massachusetts, said to be, "that when by the contract the debt is made expressly a charge upon the separate estate, or is expressly contracted upon its credit, or when the consideration goes to the benefit of such estate, or to enhance its value, then Equity will decree that it shall be paid from such estate or its income, to the extent to which the power of disposal by the married woman may go; but where she is a mere surety, or makes the contract for the accommodation of another without consideration received by her, the contract being void at Law, Equity will not enforce it against the estate, unless an express instrument makes the debt a charge upon it."

See also Schouler's Dom. Rel. 229, 237.

To render the general estate of a married woman liable, the debt must be contracted for the benefit of the estate, or for her benefit, on the credit of the estate, or the charge must be imposed in terms by the contract. *Yale v. Dederer*, cited above; *Seycraft v. Haddon*, 3 Green Ch.; *Curtis v. Engel*, 2 Sandf. 287; *Jones v. Cowperthwaite*, 17 Iowa, 393.

When the *res gestæ* are not such as to create a charge, and the plaintiff relies on a written contract, the intention to bind the estate must appear on the face of the instrument and cannot be shown orally. *Yale v. Dederer*. And so, whether real or personal property is in question, as extrinsic evidence is not admissible to vary a written contract.

Now, however, in New York, under a statute which provides that a married woman "possessed of real estate as her separate

But this decision (to say the least) is very questionable.¹ A woman's separate estate is liable, after her husband's bankruptcy, to debts incurred by her before her marriage.² Unless contrary to the deed of settlement of the company, a married woman may be a shareholder in a joint-stock company in her own right, so as to bind her separate estate.³ And the savings of property settled to her separate use without power of anticipation, are liable to indemnify a trustee against all calls and liabilities incurred on her behalf, in respect of shares purchased by him at her request, and agreed to be paid for out of her savings.⁴ 856.

It has been held that where a married woman has a life interest to her separate use, with a general power

¹ *Wainford v. Heyl*, L. R. 20 Eq. 321.

² *Chubb v. Stretch*, L. R. 9 Eq. 555.

³ *In re Leeds Banking Co.*, L. R. 3 Eq. 781.

⁴ *Butler v. Cumpston*, L. R. 7 Eq. 16.

property, may bargain, sell, and convey such property, and enter into any contract with reference to the same;" a married woman may charge her separate estate by a written contract, which implies that such is her design, although the consideration does not move to her, and she is merely a guarantor, surety, or indorser. *The Corn Exchange Ins. Co. v. Babcock*, 42 N. Y. 614. In the above case the whole subject is considered at great length and the English and American cases considered and compared, and the decision by Mr. Comm'r. Hunt of the Court of Appeals should be of special value in States which have similar legislative enactments to the one quoted.

But independent of statutory provision, the rule laid down in *Yale v. Dederer* upon this subject, is the true doctrine, and will undoubtedly be ultimately recognized by all the American Courts.

See *Tyler, Inf. and Coverture*, § 317, and cases there cited.

of appointment by will over the remainder, she does not, by exercising the power, make the remainder applicable to the discharge of such engagements as would bind her separate property, unless she has been guilty of fraud.¹ 857.

Where personal property is vested in a woman for her separate use (without any restraint on anticipation), with remainder as she should by deed or by will appoint, with remainder to her executors or administrators, this is equivalent to an absolute gift to her sole and separate use.² 858.

By the stat. 33 and 34 Vict. c. 93, "a husband shall not, by reason of any marriage which shall take place after this Act has come into operation, be liable for the debts of his wife contracted before marriage, but the wife shall be liable to be sued for, and any property belonging to her for her separate use shall be liable to satisfy such debts as if she had continued unmarried" (s. 12). This enactment extends to property settled to the separate use of a married woman without power of anticipation.³ 859.

Husband's liability on his wife's contracts before marriage.

This enactment has been repealed, so far as respects marriages after the 30th July, 1874, and fresh enact-

¹ *Vaughan v. Vanderstegen*, 2 Drew. 165, 363; *Hobday v. Peters* (No. 2), 28 Beav. 354; *Blatchford v. Woolley*, 2 Dr. & Sm. 204; *Shattock v. Shattock*, L. R. 2 Eq. 182. As to these cases, see, however, remarks of James, L. J., in *London Chartered Bank of Australia v. Lemprière*, L. R. 4 P. C. 572.

² *London Chartered Bank of Australia v. Lemprière*, L. R. 4 P. C. 572, 575-6.

³ *Sanger v. Sanger*, L. R. 11 Eq. 470.

ments have been substituted by the stat. 37 and 38 Vict. c. 50. 860.

Thus, "so much of the Married Women's Property Act, 1870, as enacts that a husband shall not be liable for the debts of his wife contracted before marriage is repealed so far as respects marriages which shall take place after the passing of this Act, and a husband and wife married after the passing of this Act may be jointly sued for any such debt" (s. 1). 861.

"The husband shall, in such action and in any action brought for damages sustained by reason of any tort committed by the wife before marriage or by reason of the breach of any contract made by the wife before marriage, be liable for the debt or damages respectively to the extent only of the assets hereinafter specified; and in addition to any other plea or pleas may plead that he is not liable to pay the debt or damages in respect of any such assets as hereinafter specified; or, confessing his liability to some amount, that he is not liable beyond what he so confesses; and if no such plea is pleaded the husband shall be deemed to have confessed his liability so far as assets are concerned" (s. 2). 862.

"If it is not found in such action that the husband is liable in respect of any such assets, he shall have judgment for his costs of defence, whatever the result of the action may be against the wife" (s. 3). 863.

"When a husband and wife are sued jointly, if by confession or otherwise it appears that the husband is liable for the debt or damages recovered, or any part thereof, the judgment to the extent of the amount for

which the husband is liable shall be a joint judgment against the husband and wife, and as to the residue, if any, of such debt or damages, the judgment shall be a separate judgment against the wife" (s. 4). 864.

"The assets in respect of and to the extent of which the husband shall in any such action be liable are as follows:

- (1.) The value of the personal estate in possession of the wife, which shall have vested in the husband;
- (2.) The value of the choses in action of the wife which the husband shall have reduced into possession, or which with reasonable diligence he might have reduced into possession;
- (3.) The value of the chattels real of the wife, which shall have vested in the husband and wife;
- (4.) The value of the rents and profits of the real estate of the wife which the husband shall have received, or with reasonable diligence might have received;
- (5.) The value of the husband's estate or interest in any property, real or personal, which the wife in contemplation of her marriage with him shall have transferred to him or to any other person;
- (6.) The value of any property, real or personal, which the wife in contemplation of her marriage with the husband shall with his consent have transferred to any person with the view of defeating or delaying her existing creditors;

"Provided that when the husband after marriage pays any debt of his wife, or has a judgment *bond fide* recovered against him in any such action as is in this Act mentioned, then to the extent of such payment or judgment the husband shall not in any subsequent action be liable" (s. 5). 865.

"This Act may be cited as the 'Married Women's Property Act (1870) Amendment Act, 1874'" (s. 7). 866.

Married
woman's
liability to
the parish
for the
main-
tenance of
her hus-
band

By the stat. 33 and 34 Vict. c. 93, it is further enacted that—"Where in England the husband of any woman having separate property becomes chargeable to any union or parish, the justices having jurisdiction in such union or parish may, in petty sessions assembled, upon application of the guardians of the poor, issue a summons against the wife, and make and enforce such order against her for the maintenance of her husband as by the 33d sect. of 'The Poor Law Amendment Act, 1868,' they may now make and enforce against a husband for the maintenance of his wife who becomes chargeable to any union or parish. Where in Ireland relief is given under the provisions of the Acts relating to the relief of the destitute poor to the husband of any woman having separate property, the cost price of such relief is hereby declared to be a loan from the guardians of the union in which the same shall be given, and shall be recoverable from such woman as if she were a feme sole by such and the same actions and proceedings as money lent" (s. 13). 867.

“A married woman having separate property shall be subject to all such liability for ^{or children.} the maintenance of her children as a widow is now by law subject to for the maintenance of her children: provided always, that nothing in this Act shall relieve her husband from any liability at present imposed upon him by law to maintain her children” (s. 14). 868.

SECTION IV.

THE WIFE'S EQUITY TO A SETTLEMENT OR MAINTENANCE OUT OF HER OWN PROPERTY.(a)

EXCEPT so far as the stat. 33 and 34 Vict. c. 93 (*supra*, Sect. III), may affect the case, trustees of a married woman's personality not settled to her separate use, may pay it over to her husband before Chancery proceedings are taken in respect of it. But on the other hand, they may refuse to pay it over to him, even at his wife's request, unless he makes a settlement, when the Court would require him to make one.¹ 869.

Power of trustees of the wife's personality not settled to her separate use.

¹ Hill on Trustees, 409, 410, 415; Re Swan, 2 Hem. & M. 34.*

(a) On this subject see Lady Elibank v. Montolieu, etc., 1 Lead. Cas. Eq., 2d ed. 341, *et seq.*; Gleaves v. Paine, 1 D. J. & S. 87.

* The equitable principle of a wife's claim to a reasonable and adequate provision out of her equitable *choses in action*, or out of any property of hers which is under the jurisdiction of the Court

With regard to the cases where the Court requires a settlement, the following propositions may be laid down, subject to the stat. 33 and 34 Vict. c. 93 (*supra*, Sect. III). 870.

I. Equity of the wife, when defendant against her husband. I. If the wife has real property, or the absolute interest in personal property (with the exception, perhaps, of a term of years), which cannot be reduced into the possession of the husband without a suit in Equity (as where the legal property is vested in trustees), and the husband applies to a Court of Equity for the purpose of reducing the property into his possession, the Court, acting upon the maxim that he who seeks equity must do equity, will not give it up to him, without requiring him to make a suitable settlement on the wife, of a part of the property, or of some other property, for her due maintenance in case of her surviving him,¹ with a provision for the issue of the marriage,² even though the property is under £200,³ unless the wife and children are already amply provided for under a prior settlement;⁴ or the right to the settlement is waived or

¹ St. § 1404, 1405, 1410, 1418; 2 Sp. 482, 484; *Duncombe v. Greenacre*, 28 Beav. 472; 2 D. F. & J. 509; *Life Association of Scotland v. Siddall*, 3 D. F. & J. 271.

² St. § 1406; 2 Sp. 488.

³ *In re Cutler*, 14 Beav. 220; *In re Kincaid's Trusts*, 1 Drew. 326.*

⁴ St. § 1416; *Spicer v. Spicer*, 24 Beav. 365; *Giacometti v. Prodgers*, L. R. 14 Eq. 252; 8 Ch. Ap. 338.

of Chancery, is generally adopted and enforced in this country. *Murray v. Lord Elibank*, 1 White & Tudor's Lead. Cas. Eq., 4th Am.ed., notes.

* *Schouler's Dom. Rel.* 131.

lost.¹ In the absence of a contract to that effect, an inadequate settlement, even before marriage, of a part of her property, does not deprive her of her right to a settlement out of the residue of her property, though vested in her at the time of the marriage.² 871.

This equity of the wife exists in the case of a charge on land for her benefit, even though there be a power of entry and receipt of the rents and profits. For, though there is this remedy at Law for raising the money, the remedy in Equity is more convenient.³ 872.

Before the alterations by the Judicature Act, there were instances in which, for the purpose of enforcing the wife's equity to a settlement, bills in Equity were entertained to restrain the husband from having recourse to his remedy in a Court of Common Law to reduce his wife's *choses in action* into possession.⁴ 873.

Injunction
against pro-
ceedings in
other
Courts.

If the husband does not choose to make a settlement or provision for the wife, the Court will not ordinarily take from him the income and interest of his wife's fortune, so long as he is willing to live with and maintain her, and there is no reason for their living apart. Under such circumstances, the Court secures the fund, so as to give her the chance of taking it by survivorship, allowing the

Refusal of
the husband
to make a
settlement.

¹ St. § 1418, 1419, *infra*, par. 885.

² *Barrow v. Barrow*, 18 Beav. 529.

³ *Duncombe v. Greenacre*, 28 Beav. 472; 2 D. F. & J. 509.

⁴ St. § 1403; 2 Sp. 429.

husband, under its order, to receive the income and interest, or a part of it at least.¹ 874.

Where a woman is indebted at the time of her marriage, she has no equity to a settlement until her debts have been provided for.² 875.

Indebted-
ness of wife
on mar-
riage.

II. The trustees in bankruptcy or insolvency of a husband, and also his trustees for payment of debts due to his creditors generally, are bound to make a settlement on the wife out of her immediate *choses in action* and immediate absolute equitable interests in chattels personal assigned to them, in the same way, and under the same circumstances, as he would be bound to make one; for it is a general principle that such trustees take the property subject to all the equities which affect the bankrupt or insolvent or general assignor. Such trustees also take the property subject to the wife's right of survivorship, in case the husband dies before the trustees have reduced her *choses in action* and equitable interests into possession.³ And even a specific assignee or purchaser from the husband, for valuable consideration, of her *choses in action* and equitable interests, is bound to make such a settlement. And no assignment of them will convey any right to the assignee or purchaser against the wife, if she survives her husband, and they are not reduced into possession in his lifetime.⁴ 876.

II. Equity
of the wife,
when de-
fendant as
against her
husband's
trustees or
vendees.

¹ St. § 1415; see 2 Sp. 490, 491.

² Barnard v. Ford, L. R. 4 Ch. Ap. 247.

³ St. § 1411, 1421; 2 Sp. 476.

⁴ St. § 1412; 2 Sp. 476; Scott v. Spashett, 3 Mac. & G. 604.

There is this distinction, however, between the case of the husband himself and his specific assignees for valuable consideration, on the one hand, and the case of his trustees in bankruptcy or insolvency, or trustees for payment of debts generally, on the other hand: in the case of the former, it is only necessary that the provision for the wife should commence from the death of her husband; but in the case of the latter, it is necessary that the provision should commence immediately, because the general assignment of his property renders him incapable for a time, and perhaps for ever, of affording her a suitable support.¹ 877.

When an immediate provision is required.

If the trustees in bankruptcy, or other general assignees claiming title under the husband, refuse to make a settlement on the wife, the like doctrine applies to them as to the husband himself where he refuses to make a settlement.² 878.

Refusal of the trustees to make a settlement.

The husband can sell the life interest of his wife in personalty, and she has no equity to a settlement as against the purchaser.³ 879.

Life interest in wife's personalty.

A wife has no equity to a settlement out of arrears of past income of real or leasehold property, whether against her husband or his particular assignee.⁴ 880.

No equity out of past income.

¹ St. § 1421.

² St. § 1415; *supra*, par. 874.

³ Re Duffy's Trust, 28 Beav. 386.

⁴ In re Carr's Trusts, L. R. 12 Eq. 609.

Reversionary choses in action, and reversionary equitable interests in personal chattels. If the husband assigns his wife's reversionary *choses in action* and other reversionary equitable interests in personal chattels, such assignment will not exclude her right of survivorship, although she join in the assignment; because the assignment, from the nature of the thing, cannot amount to a reduction into possession of such reversionary interest¹ (a). 881.

III. Equity of the wife, when plaintiff, to a settlement on her husband's death, bankruptcy, or insolvency. III. Whenever the wife, as defendant, would be entitled to an equity for a settlement, out of her equitable interest, against her husband, or against his assignees, she may assert it, as plaintiff or petitioner.² 882.

IV. Amount to be settled. IV. The Court has a full discretion as to the amount to be settled, according to the circumstances of each case. In the absence, however, of special circumstances, the general rule or the common course has been to settle about one-half on the wife and her children,³ with remainder in default of

¹ St. § 1413; 2 Sp. 476.

² St. § 1414; 2 Sp. 482, 484, 585; *Walker v. Drury*, 17 Beav. 482; *Gleaves v. Paine*, 1 D. J. & S. 87; *Re Ford*, 32 Beav. 621.

³ *Walker v. Drury*, 17 Beav. 482; *Napier v. Napier*, 1 Dru. & W. 410; *Bagshaw v. Winter*, 5 De G. & Sm. 466; *McCormick v. Garnett*, 2 Sm. & G. 37; 5 D. M. & G. 278; *Smith v. Smith*, 3 Gif. 121; *Re Grove's Trust*, 3 Gif. 583; 2 Sp. 485; 1 *Bright on Husband and Wife*, 241.*

(a) For an article on the disposition of reversionary interests of married women in chattels personal, by the writer of this Manual, see 10 Jurist, 231, 243. But see 2 Sp. 487, and cases there cited. And see stat. 20 and 21 Vict. c. 57.

* See also Schouler's Dom. Rel. 132, 133.

issue of the present or any future husband, to the husband, whether he survives the wife or not, or to his assignees.¹ 883.

V. To avoid the expense of a settlement, where the fund belonging to the wife is small, it will sometimes be ordered to be brought into Court, or if already in Court, it will be retained there, and the dividends directed to be paid to the wife for her life.² 884.

V. Substitute for a settlement where fund is small.

¹ *Spirett v. Willows*, L. R. 1 Ch. Ap. 520; *In re Suggitt's Trusts*, L. R. 3 Ch. Ap. 215; *Croxton v. May*, L. R. 9 Eq. 404. But where particular reasons have occurred, the Court has frequently settled the whole: as in *Marshall v. Fowler*, 16 Beav. 249, where the husband had taken the benefit of the Insolvent Debtor's Act, and was moreover almost entirely dependent on charity; *In re Kincaid's Trusts*, 1 Drew. 326; and *Ward v. Yates*, 1 Drew. & Sm. 80, where the husband was a bankrupt, and the fund was under £200—so small a sum that it would not have been worth while to have made any settlement at all, unless the whole had been settled; *In re Cutler*, 14 Beav. 220; *Watson v. Marshall*, 1 Weekly Reporter, 523; *Francis v. Brooking*, 19 Beav. 347; *Koeber v. Sturgis*, 22 Beav. 588; *Squires v. Ashford*, 23 Beav. 132; *Duncombe v. Greenacre* (No. 2), 29 Beav. 578; and *Newman v. Wilson* (No. 2), 31 Beav. 34, where the husband was an insolvent debtor; in *Scott v. Spashett*, 3 M. & G. 599, where, besides other special circumstances, the husband had received about double the amount of the wife's property under a previous order, and no settlement had ever been made; and in *Dunkley v. Dunkley*, 4 De G. & Sm. 570; 2 D. M. & G. 390; *Vaughan v. Buck*, 1 Sim. (N. S.) 284; and *Gent v. Harris*, 10 Hare, 383, where the husband had become bankrupt, and had deserted his wife.

² *Bagshaw v. Winter*, 5 De G. & Sm. 466; *Watson v. Marshall*, 17 Beav. 363; *Walker v. Drury*, Id. 482.

VI. Wife's
equity
waived,

VI. The Court will not insist on a settlement on the wife, if at any time before a settlement under the decree is completed, or at least before proposals are made under the decree, the wife, by her consent given in open Court, or under a commission, agrees that the absolute fund shall be wholly and absolutely paid over to the husband; except in the case of a female ward of the Court, who has married without its authority.¹ But until a transfer to the husband has actually been made, the wife can revoke her consent.² 885.

or lost, or
suspended.

The equity of the wife to a settlement may be lost or suspended by her own misconduct. Thus, if the wife (not being a ward of Court, married without its consent) has been living in adultery, apart from the husband, a Court of Equity will not direct a settlement, on her own application, as it otherwise would; because, by such misconduct, she has rendered herself unworthy of the protection and favor of the Court. But, on the other hand, in such a case, a Court of Equity will not decree such equitable property to be paid over to the husband on his application; for when the wife is living apart from him, he is at no charge for her maintenance; and it is only in respect to his duty to maintain her that the Law gives him her fortune. In the case, however, of a female ward of Court, married without its consent, the Court will insist on a settlement, as a punishment to the husband for con-

¹ St. § 1418; 2 Sp. 486, 488.

² Penfold v. Mould, L. R. 4 Eq. 562.

tempt of its authority.¹ And we must be careful to distinguish an application which is grounded merely on general principles of equity, and an application grounded on positive vested rights under a settlement, or under a valid contract for a settlement made before marriage. In the latter case, Courts of Equity cannot refuse to protect or support those vested rights on account of any misconduct in the wife.² 886.

A woman may by her fraud, even though perpetrated by compulsion of her husband, preclude herself from asserting against a purchaser that equity to a settlement which she would otherwise possess.³ 887.

Where an executor is indebted to the testator's estate, and unable to pay, he is not entitled to any part of the assets in right of his wife, and consequently no equity to a settlement of any part of the assets can arise to the wife.⁴ 888.

We have seen that the Court, in making a settlement on the wife, properly attends to the interests of the children. But it must be observed, that the Court attends to their interest only upon the supposition that, in so doing, it is carrying into effect her own desire to provide for her offspring. They have no independent equity of their own; for although the husband is under a moral obligation to provide for them, yet he is not bound to provide for them in any particular way or out of any par-

Waiver of
provision
for the
children.

¹ St. § 1419, and note, and 1419 a; 2 Sp. 486.

² St. § 1420.

³ In re Lush's Trusts, L. R. 4 Ch. Ap. 591.

⁴ Knight v. Knight, L. R. 18 Eq. 487.

ticular fund. They have only a claim to the consideration of the Court, constituting part of the equity of their mother, and capable of being either expressly given up by her before the amount is ascertained, or tacitly waived by her dying without having asserted it.¹ And it has been held that if she dies before a decree, even without waiving a right to a settlement, the children cannot assert any claim.² 889.

VII. By the law of Scotland, a married woman has no equity to a settlement; and if husband and wife are domiciled in Scotland, she has no equity to a settlement,³ even out of the produce of real estate in England directed to be sold.⁴ 890.

VIII. Although Courts of Equity do not claim any general jurisdiction to decree a suitable maintenance for the wife, out of her husband's property, where he has deserted or ill-treated her, yet, whenever the wife has any equitable property, even though it be only for her life, within the reach of the jurisdiction of Courts of Equity, and the husband has deserted or ill-treated or refused to maintain her, they will decree a suitable and immediate maintenance out of such equitable property, or, if it has passed into the possession of a *bonâ fide* purchaser without notice, out of other property of the husband; because the obliga-

VII. No equity to a settlement, where parties are domiciled in Scotland.

VIII. Equity of the wife to a maintenance in case of the husband's ill-conduct, or bankruptcy, or insolvency.

¹ See St. § 1417; 2 Sp. 488-492.

² Wallace v. Auldjo, 2 Dr. & Sm. 216; 1 D. J. & S. 643.

³ McCormick v. Garnett, 5 D. M. & G. 278.

⁴ Hitchcock v. Clendinen, 12 Beav. 534.

tion of maintaining the wife is the ground on which the Law gives the property to the husband.¹ And where the wife has an equitable interest for life only, and the husband is a bankrupt or insolvent, and therefore is, as a general rule, deprived, for a time at least, of the means of duly maintaining her, she is entitled to an allowance for maintenance out of such life interest, as against the trustees.² But a married woman, even though her husband does not maintain her, is not entitled, as against a particular assignee for valuable consideration of the husband, to an allowance for maintenance out of the income of real or personal estate to which she is entitled in Equity, for her life only; because, if she were, purchasers would be involved in inquiries respecting the relations between husband and wife, and their other property and sources of maintenance; and the life interests of married women would become incapable of being dealt with, whatever might be the exigencies of the case.³ 891.

¹ St. § 1408, p. 1408, note, 1422-1424, 1426.

² St. § 1408 n, 1412.

³ *Tidd v. Lister*, 10 Hare, 151, 153; 3 D. M. & G. 857.*

* Schouler's Dom. Rel. 157.

SECTION V.

SOME MISCELLANEOUS POINTS.(a)

As a deed of separation cannot dissolve the marriage, it does not relieve the wife from any of the ordinary disabilities of coverture.¹ 892.

A deed of separation entered into between the husband and wife alone, without the intervention of trustees, is utterly void.² 893.

A covenant for separation, whether immediate or future is void. But the Court may compel parties, in pursuance of articles of separation entered into between them, to execute a formal deed of separation, quantum valeat, unless in the meantime they agree to live together. And it would seem that if a deed for immediate, and not for future, separation, contains a covenant by the husband to maintain his wife, and a covenant by the trustees to exonerate him from any debts contracted for her maintenance, such covenant will be enforced, so long as the separation lasts; but it will not be enforced for a longer period, even as to past separation.³ 894.

A contract in a separation deed cannot affect the

¹ St. § 1428.

² St. § 1428.*

³ St. § 1428; 2 Sp. 528; *Wilson v. Wilson*, 1 H. L. Cas. 538; 5 Id. 51, 61, 62.

(a) See 2 Lead. Cas. Eq. 2d ed. 713-717, *et seq.*

* Schouler's Dom. Rel. 293.

property of the wife, if not settled to her separate use, or reduced into possession during the coverture.¹ 895.

The Court will interfere to prevent the doing of any personal acts, which, if done, would be in violation of an agreement respecting property entered into on the separation. And where, by articles of separation, it is agreed that the husband shall permit his wife to live separate, and as if unmarried, without any molestation, interference, or annoyance whatever, and that a proper deed shall be executed for effectuating the object of the articles, and containing all such covenants, etc., as shall be deemed expedient for that purpose, this justifies the insertion in the deed of a covenant that the husband will not compel, or endeavor to compel, the wife, by legal proceedings or otherwise, to cohabit or live with him. And such a covenant may be enforced by action or injunction.² 896.

Reconciliation puts an end to a deed of separation, as it must not be permitted to parties to make agreements for themselves to hold good whenever they choose to live separate.³ 897.

If a wife induces her husband to execute a deed of separation, in contemplation by her of her renewal of an illicit intercourse, the deed is void.⁴ 898.

¹ 2 Sp. 532.

² 2 Sp. 532; *Wilson v. Wilson*, 1 H. L. Cas. 538; 5 Id. 40, 51, 52, 60-63, 71, 72; *Sanders v. Rodway*, 16 Beav. 207; and see remarks of V.-C. Wood, in *Stocker v. Wedderburn*, 3 K. & J. 403; *Hunt v. Hunt*, 31 Beav. 89; 4 D. F. & J. 221; *Gibbs v. Harding*, L. R. 8 Eq. 490; 5 Ch. Ap. 336.

³ 2 Sp. 532.

⁴ *Evans v. Carrington*, 2 D. F. & J. 481.

Non-disclosure of antenuptial incontinence. Non-disclosure of antenuptial incontinence on the part of a wife is not such a fraud upon the husband as to entitle him to set aside a settlement made upon the marriage.¹ 899.

Benefits under settlement not forfeited by adultery. The Court has no jurisdiction to deprive an adulteress, whose marriage has been dissolved, of any benefit under the settlement made upon the marriage.² 900.

Purchase. Where a married woman contracts and pays for real estate without the knowledge of her husband, but for his benefit, such a purchase is binding when ratified by the husband.³ 901.

Fraud. A woman, although married, cannot, by fraud, obtain for herself or those claiming under her any benefit or interest, to the detriment of any other person.⁴ 902.

And if husband and wife mortgage the wife's real estate, and represent to the mortgagee that there is no settlement, and the mortgagee has no notice that there is a settlement, the wife is bound by the representation, and the mortgagee is protected.⁵ 903.

Money advanced for support of a deserted wife. Where a wife is deserted by her husband, and a person advances money to her for her support, and it is applied for that purpose, he can in Equity compel the husband to repay him the money.⁶ 904.

¹ *Evans v. Carrington*, 2 D. F. & J. 481.

² *Evans v. Carrington*, 2 D. F. & J. 481; *Fitzgerald v. Chapman*, L. R. 1 Ch. D. 563. ³ *Millard v. Harvey*, 34 Beav. 237.

⁴ *V.-C. Wood in Nicholl v. Jones*, L. R. 3 Eq. 709.

⁵ *Sharpe v. Foy*, L. R. 4 Ch. Ap. 35.

⁶ *Deare v. Soutten*, L. R. 9 Eq. 151.

TITLE VI.

Of Auxiliary Equity.¹

¹ The author has omitted this title in the last two London editions of this work, as treating of matters of practice rather than principle, and rendered partially unnecessary by recent Parliamentary enactments. The subject is still important to the student, and is restored to this edition by the editor.

CHAPTER I.

OF A DISCOVERY IN AID OF A SUIT OR DEFENCE IN ANOTHER COURT.

EVERY bill which requires an answer is in a certain sense a bill of discovery. But a bill of discovery, technically so called, is a bill which asks for no relief, but simply seeks a discovery of facts resting in the knowledge of the defendant, or of deeds or writings or other things in the possession or power of the defendant, in order to maintain the right or title of the party asking it, in some suit or proceeding in another Court.¹ 905.

Definition
of a bill of
discovery.

It is immaterial whether the Court be situate in the same country, or in a foreign country in amity with the country where the bill is filed.² And it is not necessary that the suit should be already commenced, to which the bill of discovery is to be auxiliary, if the discovery is indispensable, in order to enable the party rightly to proceed.³ 906.

Discovery
in aid of a
foreign
suit,

or a suit not
yet com-
menced.

¹ St. § 1483.*

² St. § 1495.†

³ See St. § 1483, 1495.‡

* Mitford and Tyler's Equity Pleadings, 151-153.

† Mitf. and Tyl. Eq. Pl. 282, note 1.

‡ St. Eq. Pl. § 321, 560.

Discovery
may be re-
sisted on
certain
grounds.

These bills, however, may be resisted on the following grounds: 1. That the subject is not cognizable in any municipal Court. 2. That the Court will not lend its aid to obtain a discovery for the particular Court for which it is wanted. 3. That the plaintiff is not entitled to the discovery, by reason of some personal disability. 4. That the plaintiff has no title to the character in which he sues. 5. That the value of the thing sued for is beneath the dignity of the Court. 6. That the plaintiff has no interest in the subject-matter or title to the discovery required;¹ as where the plaintiff is only heir apparent.² 7. That the defendant is not answerable to the plaintiff, but that some other person has a right to call for the discovery. 8. That the policy of the Law exempts the defendant from the discovery;³ as if a bill of discovery is filed against a married woman, to compel her to disclose facts which may charge her husband; or where the bill seeks to compel a counsel or solicitor to disclose the secrets of his client.⁴ 9. That the discovery relates to the defendant's case, and not to the plaintiff's case.⁵ So that even an heir-at-law has not a right to the inspection of deeds in the possession of a devisee, unless he is an heir in tail; in which case he is entitled to see the

¹ St. § 1489, 1490.*

² St. § 1490.

³ St. § 1489.

⁴ St. § 1496.

⁵ St. § 1489, 1490, note.

* Mitf. and Tyl. Eq. Pl. 281, *et seq.*

deeds creating the estate tail.¹ But if a bill filed by a defendant at law suggests specific defects in the title of his adversary, the discovery will be granted, although the case made by the bill is not the assertion of an affirmative title in the party bringing the bill.² 10. That the discovery is not material in the suit.³ 11. That the defendant has no interest in the suit, but is a mere witness;⁴ unless the bill charges him with fraud; as in the case of an attorney who has assisted a client in obtaining a fraudulent deed;⁵ or unless he is the officer of a corporation; in which case he may be made a party to a bill for discovery against such corporation, on the ground, it has been said, that a corporation, being an artificial person, cannot be compelled to make any discovery on oath.⁶ 12. A discovery may in general be resisted where it would disclose circumstances that would subject the defendant to a penalty or forfeiture, or to a criminal prosecution, or to ecclesiastical censures. To this rule, however, there are various exceptions; as in the case of fraud or conspiracy, or a statutory prohibition of resisting a discovery, or an expressed or implied contract not to resist discovery.⁷ 13. A discovery may also be resisted on the ground that it is perfectly clear that the action or

¹ St. § 1491, 1492.

² St. § 1493 a, note.

³ St. § 1489, 1497.

⁴ St. § 1489, 1499.

⁵ St. § 1500.

⁶ St. § 1501.

⁷ See St. § 1494, and note, and Story's Eq. Plead. c. xi, and 1 Dan. C. P., 2d ed. by Headlam, 517-525.*

* Mitf. & Tyl. Eq. Pl. 289, *et seq.*

DISCOVERY.

defence is not maintainable at Law.¹ 14. That ~~the~~ Court where the suit is brought has always had the power of eliciting the facts without the aid of a bill of discovery.² But although a party may now examine his opponent at law under the Stat. 14 and 15 Vict. c. 99, s. 2, and under the Stat. 17 and 18 Vict. c. 125, s. 51-54, and the Courts of Common Law can now compel the production of documents under the 6th section of the former Act and the 50th section of the latter Act, yet a plaintiff or defendant at law is entitled to a discovery in Equity in aid of his action or defence.³ 15. A discovery may also be resisted on the ground that it is in aid of a controversy pending before arbitrators, who, not being the regular tribunals for administering justice, but judges of the party's own choice, must submit to the inconvenience incident to their position.⁴ But this has no application to a compulsory arbitration ordered in an action.⁵ 16. In general, arbitrators are not compellable to disclose the grounds on which they made their award.⁶ 17. That the defendant is a *bond fide* purchaser for valuable consideration, and without notice, who has paid his

¹ St. § 1495.

² Lovell v. Galloway, 17 Beav. 1; Senior v. Pritchard, 16 Beav. 473; British Empire Shipping Company v. Somes, 3 K. & J. 433, 436.

³ St. § 1495.*

⁴ British Empire Shipping Company v. Somes, 3 K. & J. 433, 436.

⁵ St. § 1498.

* St. Eq. Pl. § 554, 555.

purchase-money, and has an equal equity with the plaintiff;¹ or that the defendant is a sub-purchaser, whether with or without notice, from such *bond fide* purchaser without notice.² But a judgment creditor by *elegit* is not deemed a purchaser within the above rule.³ 18. A jointress is entitled to protect herself against a disclosure of her jointure deed, if the party seeking the discovery is not capable of confirming the jointure, or if, being capable, he does not offer to confirm it. If he is capable and offers to confirm it, the discovery will be granted as soon as the confirmation is made, but not before; for otherwise it might happen, that after the discovery, his offer might become ineffectual by the intervention of other interests.⁴ 907.

¹ St. § 1502, 1503.

² St. § 1503 a.

³ St. § 1503 b.

⁴ St. § 1504.

CHAPTER II.

OF THE TAKING AND PRESERVING OF TESTIMONY
IN AID OF A SUIT OR DEFENCE IN ANOTHER
COURT.

ONE species of bill filed for this purpose is
Bill to per-
petuate tes-
timony. a bill to perpetuate testimony. This is a
 bill which is filed to preserve testimony,
 when it is in danger of being lost, before the matter to
 which it relates can be made the subject of judicial in-
 vestigation.¹ Thus, when the plaintiff's title is in re-
 mainder, or when he himself is in actual possession of
 the property, or when he is in present possession of the
 rights which he seeks to perpetuate by proofs, he is
 necessarily unable to bring his disputed interest into
 immediate judicial investigation; and therefore Courts
 of Equity will entertain a suit to secure the proofs on
 which his title depends; for otherwise such proofs
 might be lost by the death of his witnesses, and the
 adverse party might purposely delay his suit with a
 view to that very event.² An instance of this occurs
 where a devisee, in order to perpetuate the testimony

¹ St. § 1506.

² St. § 1508; *Ellice v. Roupell* (No. 1), 32 Beav. 299; s. c. (No. 2), 32 Beav. 308; s. c. (No. 3), 32 Beav. 318.

of witnesses to the will, exhibits a bill against the heir, setting forth the will *verbatim*, and suggesting that the heir is inclined to dispute its validity; and then, when the cause is at issue, witnesses to the will are examined, after which the cause is at an end; but the heir is entitled to his costs, even though he contests the will. This is what is usually meant by proving a will in Chancery.¹ 908.

Such a bill cannot be brought by a defendant to a suit already commenced, though he cannot himself put the matter into a course of judicial investigation, and yet the plaintiff may dismiss his bill, and then file a new bill when the witnesses are dead, whose testimony it is the interest of the defendant to perpetuate.² 909.

Courts of Equity will not perpetuate testimony in support of a right which may be barred by the defendant.³ 910.

Such a bill may be filed in relation to mere personal demands, and even in cases of penalty or forfeiture.⁴ 911.

Another kind of bill of a similar character, but founded on distinct circumstances, is a bill to take testimony *de bene esse*, which is one that is filed to preserve testimony respecting a vested interest in the plaintiff, which is the subject of an action or suit already commenced, and which depends on the testimony of a single witness, or on the

¹ St. § 1506.*

² Earl Spencer v. Peck, L. R. 3 Eq. Cas. 415.

³ St. § 1511.

⁴ St. § 1509.

* 2 Blackst. Comm. 450.

sole testimony of aged or infirm persons, or on testimony that cannot be given *viva voce* in the ordinary way. Thus, an order will be made to take the testimony of persons who are seventy years of age, or of persons who are unable to travel, or of those who are going abroad and likely to die before the time of the trial. And the Court will even entertain a bill to preserve the testimony of a witness who is capable of attending, if he is a single witness to an important fact in the cause.¹ 912.

When a bill
to take and
preserve
testimony
will not be
entertained.

Where a person is able to bring a matter into immediate judicial investigation, and yet he has not commenced any suit, the Court will not entertain a bill of any kind to take and preserve testimony in his favor. For if, in such case, the evidence may be procured *viva voce* in the ordinary way, there is no need whatever of having recourse to written depositions in place of *viva voce* evidence.² And even if the evidence cannot be procured in the ordinary way, yet a bill to take the testimony

¹ St. § 1513, 1514. See Judgment in *Earl Spencer v. Peck*, L. R. 3 Eq. Cas. 421.*

² St. § 1508; *Ellice v. Roupell* (No. 1), 32 Beav. 299; s. c. (No. 2), 32 Beav. 308; s. c. (No. 3), 32 Beav. 318.

* By the common law, Courts of Law have no authority to issue commissions to take the testimony of witnesses *de bene esse* in any case. St. Eq. Jur. § 1514; 3 Blackst. Comm. 383. This defect was long since cured in America, and the authority given to our Courts of Common Law, to take the depositions of witnesses both at home and abroad, has been carried to an extent far beyond what has been exercised by Courts of Equity. St. Eq. Jur. § 1514, note.

de bene esse will not be entertained except in aid of a suit already commenced; because if it were, the plaintiff in the bill, having obtained the written testimony of his own witnesses, might delay his action until their death, so that they might be guilty of the grossest perjury, and yet go unpunished, and also until the death of those witnesses for the adverse party who were able to give their testimony in the usual way, and thus the justice of the case might be entirely defeated.¹ 913.

Commissions to take the testimony of witnesses abroad, although confined to civil actions, are grantable in cases of civil tort, such as libel.² 914.

Even where an order is made to take the written deposition of witnesses, on a bill to perpetuate testimony, or to take testimony *de bene esse*, the evidence so taken must not be used, if the witnesses are alive, and capable of attending, and within the jurisdiction at the time of the trial.³ 915.

When depositions taken on such bills are not allowed to be used.

¹ See St. § 1508 and note, and 1513, note.

² St. § 1515.

³ St. § 1507, 1508, note, 1512, 1513, note, and 1516, note.

31 AND 32 VICT. CAP. XL.

An Act to amend the Law relating to Partition.

[25TH JUNE, 1868.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title. 1. This Act may be cited as The Partition Act, 1868.

As to the term "the Court." 2. In this Act the term "the Court" means the Court of Chancery in *England*, the Court of Chancery in *Ireland*, the Landed Estates Court in *Ireland*, and the Court of Chancery of the County Palatine of *Lancaster*, within their respective jurisdictions.

Power to Court to order sale instead of division. 3. In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the

Partition.

number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

4. In a suit for partition, where if this Act had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively to the extent of one moiety or upwards in the property to which the suit relates, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.

Sale on application of certain proportion of parties interested.

5. In a suit for partition, where, if this Act had not been passed, a decree for partition might have been made, then if any party interested in the property to which the

As to purchase of share of party desiring sale.

Partition.

suit relates requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property, or some of them undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.

Authority
for parties
interested
to bid.

6. On any sale under this Act the Court may, if it thinks fit, allow any of the parties interested in the property, to bid at the sale, on such terms as to non-payment of deposit, or as to setting off or accounting for the purchase-money or any part thereof instead of paying the same, or as to any other matters, as to the Court seem reasonable.

Application
of Trustee
Act.
(13 and 14
Vic. c. 60.)

7. Section Thirty of The Trustee Act, 1850, shall extend and apply to cases, where in suits for partition, the Court directs a sale instead of a division of the property.

Application
of proceeds
of sale.
(19 and 20
Vict. c. 120.)

8. Sections Twenty-three to Twenty-five (both inclusive) of the Act of the session of the nineteenth and twentieth years of Her Majesty's reign (Chapter One hundred and

Partition.

twenty), "to facilitate Leases and Sales of Settled Estates," shall extend and apply to money to be received on any sale effected under the authority of this Act.

9. Any person who, if this Act had not been passed, might have maintained a suit for partition, may maintain such suit against any one or more of the parties interested, without serving the other or others (if any) of those parties; and it shall not be competent to any defendant in the suit to object for want of parties; and at the hearing of the cause the Court may direct such inquiries as to the nature of the property, and the persons interested therein, and other matters, as it thinks necessary or proper with a view to an order for partition or sale being made on further consideration; but all persons who, if this Act had not been passed, would have been necessary parties to the suit, shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the suit, and shall be deemed parties to the suit; and all such persons may have liberty to attend the proceedings; and any such person may, within a time limited by general orders, apply to the Court to add to the decree or order.

Parties to
partition
suits.

10. In a suit for partition the Court may make such order as it thinks just respecting costs up to the time of the hearing.

Costs in
partition
suits.

Partition.

As to gen-
eral orders
under this
Act.
(21 and 22
Vict. c. 27.)

11. Sections Nine, Ten, and Eleven of the Chancery Amendment Act, 1858, relative to the making of general orders, shall have effect as if they were repeated in this Act, and in terms made applicable to the purposes thereof.

Jurisdiction
of County
Courts in
partition.
(28 and 29
Vict. c. 99.)

12. In *England* the County Courts shall have and exercise the like power and authority as the Court of Chancery in suits for partition (including the power and authority conferred by this Act) in any case where the property to which the suit relates does not exceed in value the sum of five hundred pounds, and the same shall be had and exercised in like manner and subject to the like provisions as the power and authority conferred by Section One of the County Courts Act, 1865.

Partition.

39 AND 40 VICT. CAP. XVII.

An Act to amend the Partition Act, 1868.

[27TH JUNE, 1876.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Partition Act, 1876, and shall be read as one with the Partition Act, 1868.

Short title.

2. This Act shall apply to actions pending at the time of the passing of this Act as well as to actions commenced after the passing thereof, and the term "action" includes a suit, and the term "judgment" includes decree or order.

Application of Act.

3. Where in an action for partition it appears to the Court that notice of the judgment on the hearing of the cause cannot be served on all the persons on whom that notice is by the Partition Act, 1868, required

Power to dispense with service of notice of decree or order in special cases.

Partition.

to be served, or cannot be so served without expense disproportionate to the value of the property to which the action relates, the Court may, if it thinks fit, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order, dispense with that service on any person or class of persons specified in the order, and, instead thereof, may direct advertisements to be published at such times and in such manner as the Court shall think fit, calling upon all persons claiming to be interested in such property who have not been so served to come in and establish their respective claims in respect thereof before the Judge in Chambers within a time to be thereby limited. After the expiration of the time so limited all persons who shall not have so come in and established such claims, whether they are within or without the jurisdiction of the Court (including persons under any disability), shall be bound by the proceedings in the action as if on the day of the date of the order dispensing with service they had been served with notice of the judgment, service whereof is dispensed with; and thereupon the powers of the Court under the Trustee Act, 1850, shall extend to their interests in the property to which the action relates as if they had been parties to the action; and the Court may thereupon, if it shall think fit, direct a sale of the property and give all necessary or proper consequential directions.

Partition.

4. When an order is made under this Act dispensing with service of notice on any person or class of persons, and property is sold by order of the Court, the following provisions shall have effect:

Proceedings
where ser-
vice is dis-
pensed
with.

- (1.) The proceeds of sale shall be paid into Court to abide the further order of the Court:
- (2.) The Court shall, by order, fix a time, at the expiration of which the proceeds will be distributed, and may from time to time, by further order, extend that time:
- (3.) The Court shall direct such notices to be given by advertisements or otherwise as it thinks best adapted for notifying to any person on whom service is dispensed with, who may not have previously come in and established their claims, the fact of the sale, the time of the intended distribution, and the time within which a claim to participate in the proceeds must be made:
- (4.) If at the expiration of the time so fixed or extended the interests of all the persons interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights of those persons:
- (5.) If at the expiration of the time so fixed or extended the interests of all the persons interested have not been ascertained, and it appears to the Court that they cannot be ascer-

Partition.

tained, or cannot be ascertained without expense disproportionate to the value of the property or of the unascertained interests, the Court shall distribute the proceeds in such manner as appears to the Court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the Court, and with such reservations (if any) as to the Court may seem fit in favor of any other persons (whether ascertained or not) who may appear from the evidence before the Court to have any *primâ facie* rights which ought to be so provided for, although such rights may not have been fully established, but to the exclusion of all other persons, and thereupon all such other persons shall by virtue of this Act be excluded from participation in those proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

Provision
for case of
successive
sales in
same
action.

5. Where in an action for partition two or more sales are made, if any person who has by virtue of this Act been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the pro-

Partition.

ceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

6. In an action for partition a request for sale may be made or an undertaking to purchase given on the part of a married woman, infant, person of unsound mind, or person under any other disability, by the next friend, guardian, committee in lunacy (if so authorized by order in lunacy), or other person authorized to act on behalf of the person under such disability, but the Court shall not be bound to comply with any such request or undertaking on the part of an infant unless it appear that the sale or purchase will be for his benefit.

Request by
married
woman,
infant, or
person
under
disability.

7. For the purposes of the Partition Act, 1868, and of this Act, an action for partition shall include an action for sale and distribution of the proceeds, and in an action for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

Action for
partition to
include
action for
sale and
distribution
of the
proceeds.

Sale of Land by Auction.

30 AND 31 VICT. CAP. XLVIII.

An Act for Amending the Law of Auctions of Estates.

[15TH JULY, 1867.]

BE it enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title. 1. This Act may be cited for all purposes as the Sale of Land by Auction Act, 1867.

Commencement of Act. 2. This Act shall commence and take effect on the first day of *August*, 1867.

Interpretation of terms. 3. "Auctioneer" shall mean any person selling by public auction any land, whether in lots or otherwise:

"Land" shall mean any interest in any messuages, lands, tenements, or hereditaments, of whatever tenure:

"Agent" shall mean the solicitor, steward, or land agent of the seller:

"Puffer" shall mean a person appointed to bid on the part of the owner.

Sale of Land by Auction.

4. And whereas there is at present a conflict between Her Majesty's Courts of Law and Equity in respect to the validity of sales by auction of land where a puffer has bid, although no right of bidding on behalf of the owner was reserved, the Courts of Law holding that all such sales are absolutely illegal, and the Courts of Equity under some circumstances giving effect to them, but even in Courts of Equity the rule is unsettled: And whereas it is expedient that an end should be put to such conflicting and unsettled opinions: Be it therefore enacted, that from and after the passing of this Act whenever a sale by auction of land would be invalid at Law by reason of the employment of a puffer, the same shall be deemed invalid in Equity as well as at Law.

Where sales
are invalid
in Law to be
also invalid
in Equity.

5. And whereas as sales of land by auction are now conducted many of such sales are illegal, and could not be enforced against an unwilling purchaser, and it is expedient for the safety of both seller and purchaser that such sales should be conducted as to be binding on both parties: Be it therefore enacted by the authority aforesaid as follows: That the particulars or conditions of sale by auction of any land shall state whether such land will be sold without reserve, or subject to a reserved price, or whether a right to bid is reserved; if it is stated that such land will be sold without reserve, or to that

Rule re-
specting
sale with-
out reserve,
etc.

Sale of Land by Auction.

effect, then it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person. (a)

Rule respecting sale subject to right of seller to bid as he may think proper.

6. And where any sale by auction of land is declared either in the particulars or conditions of such sale to be subject to a right for the seller to bid, it shall be lawful for the seller or any one person on his behalf to bid at such auction in such manner as he may think proper.

Practice of opening biddings, by order of Chancery, except on ground of fraud, to be discontinued.

7. And whereas it is the long-settled practice of Courts of Equity in sales by auction of land under their authority to open biddings even more than once, and much inconvenience has arisen from such practice, and it is expedient that the Courts of Equity should no longer have the power to open biddings after sales by auction of land under their authority: Be it further enacted by the authority aforesaid, that the practice of opening the biddings on any sale by auction of land or by virtue of any order of the High Court of Chancery shall, from and after the time appointed for the commencement of this Act, be discontinued, and the highest *bond fide* bidder at such sale, provided he shall have bid a sum equal to or higher than the reserved price (if any), shall be declared and

(a) In *Gilliat v. Gilliat*, L. R. 9 Eq. 60, it was held that it is illegal to employ a person to bid up to the reserved bid, unless the right to do so is expressly stipulated for.

Sale of Land by Auction.

allowed the purchaser, unless the Court or Judge shall, on the ground of fraud or improper conduct in the management of the sale, upon the application of any person interested in the land (such application to be made to the Court or Judge before the Chief Clerk's certificate of the result of the sale shall have become binding), either open the biddings, holding such bidder bound by his bidding, or discharge him from being the purchaser, and order the land to be resold under such terms as to costs or otherwise as the Court or Judge shall think fit.

8. Except as aforesaid, nothing in this Act contained shall affect any sale of land made under or by virtue of any order of the High Court of Chancery in *England*, of the High Court of Chancery in *Ireland*, or of the Landed Estates Court there, or of the Court of Chancery in the County Palatine of *Lancaster*, or of any County or other Court having jurisdiction in Equity.

Court of
Chancery,
etc., in other
respects
excepted
from opera-
tion of Act.

9. This Act shall not extend to *Scotland*.

Not to
extend to
Scotland.

The Supreme Court of Judicature Act, 1873.

36 AND 37 VICT. CAP. LXVI.

The Supreme Court of Judicature Act, 1873.

SECTION 24.

Law and
Equity to be
concur-
rently ad-
ministered.

IN every civil cause or matter commenced in the High Court of Justice Law and Equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the Rules following :

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

The Supreme Court of Judicature Act, 1873.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purposes before the passing of this Act.

(3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed, or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief related to or con-

The Supreme Court of Judicature Act, 1873.

nected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in ordinary way by such defendant.

(4.) The said Courts respectively, and every Judge thereof, shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act.

(5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed,

The Supreme Court of Judicature Act, 1873.

either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally or so far as may be necessary for the purposes of justice; and the Court shall thereupon make such order as shall be just.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the common-law or by any custom, or created by any statute, in the same manner as the same would have been recognized and given effect to if this Act had not passed

The Supreme Court of Judicature Act, 1873.

by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

(7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

SECTION 25.

Rules of law
upon cer-
tain points. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next hereinafter mentioned; Be it enacted as follows:

The Supreme Court of Judicature Act, 1873.

(1.) [By the Supreme Court of Judicature Act, 1875 (38 and 39 Vict. c. 77), s. 10, an enactment is made in lieu of this 1st subsection; for which see *supra*, par. 472.]

Adminis-
tration of
assets of in-
solvent es-
tates.

(2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

Statutes of
Limitation
inapplicable
to express
trusts.

(3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Equitable
waste.

(4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Merger.

(5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the

Suits for
possession
of land by
mortgagors.

The Supreme Court of Judicature Act, 1873.

receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Assignment of debts and choses in action. (6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing and conflicting claims to such debt or chose in action, he shall be entitled, if he think fit,

The Supreme Court of Judicature Act, 1873.

to call upon the several persons making claim thereto, to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

(7.) Stipulations in contracts, as to time or otherwise, which would not before the passing of this Act have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in Equity.

Stipulation
not of the
essence of
contracts.

(8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim the right to do the act sought to be restrained

Injunctions
and re-
ceivers.

The Supreme Court of Judicature Act, 1873.

under any color of title, and whether the estates claimed by both or either of the parties are legal or equitable.

Damages by collision at sea. (9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

Infants. (10.) In questions relating to the custody and education of infants the Rules of Equity shall prevail.

Cases of conflict not enumerated. (11.) Generally in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the Rules of Equity and the Rules of the Common Law with reference to the same matter, the Rules of Equity shall prevail.

SECTION 89.

Powers of inferior Courts having Equity and Admiralty jurisdiction. Every inferior Court which now has or which may after the passing of this Act have jurisdiction in Equity, or at Law and in Equity, and in Admiralty respectively, shall, as regards all causes of action within its

The Supreme Court of Judicature Act, 1873.

jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

SECTION 90.

Where in any proceeding before any such inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court, or any Division or Judge thereof, if it shall be thought fit, on application of any party to the proceeding, to order that the whole proceeding be transferred from such inferior Court to the High Court, or to any Division thereof;

Counter-claims in inferior Courts, and transfers therefrom.

The Supreme Court of Judicature Act, 1873.

and in such case the Record in such proceeding shall be transmitted by the Registrar, or other proper officer, of the inferior Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had ~~been~~ originally commenced therein.

SECTION 91.

Rules of
Law to ap-
ply to infe-
rior Courts.

The several rules of Law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such rules relate shall be respectively cognizable by such Courts.

INDEX.

The figures refer to the paragraphs, and not to the pages,
except where otherwise indicated.

A.

ABATEMENT,

of debts and legacies, 471

ACCIDENT,

definition of, 61-3

remediable at law, 64

not remediable at law or in equity, 65-9

remediable in equity, 70-9

arising from neglect, 66

preventing fulfilment of engagement, 67

to property in lease, 67

death of vendor before receipt of annuity, 67

defective execution of a will, 69

defective execution or non-execution of a power, 77-9

loss of deeds, 71-4

loss of bonds and unsealed securities, 75, 76

ACCOUNT, 454-465

settlement of accounts, 454

division of accounts, 455

open accounts, 456

stated accounts, 457, 458

settled accounts, 459-463

appropriation of payments, 464

partnership account, 643

agency, 465, 664

mesne profits, 665

waste, 666

tithes and moduses, 667

ACQUIESCENCE,

in a breach of trust, 373

ACTION, THINGS IN,
assignment of, 432-9**ADEMPTION,**
of portions under a settlement, 704-7
of legacies to a child, 708, 709
no ademption of legacies to strangers, 710**ADMINISTRATION,**
jurisdiction as to, 466
proceedings by executor or administrator, 467
proceedings of creditors, 468
division of assets, 469, 470
of legal assets, 469, 471
of equitable assets, 469-471
of assets of insolvent estates and companies, 472
refunding share of estate, 473
operation of the statute of limitations as regards debts, 474
order of administration of different properties in payment of
debts, legacies, and annuities, 475-488
order of satisfaction, 489-492
marshalling of assets, 493-500
in the case of charitable legacies, 496, 497
foreign assets, 501-4**ADMINISTRATORS.** See **ADMINISTRATION.**
may not derive a benefit, 163
purchase from, 192**ADVANCEMENT, 313, 314, 825****ADVISER,**
fraud of a confidential, 153**ADVOWSON,**
mortgage of, 524**AGENCY, 664, 743****AGENT,**
fraud of an, 160, 362-4
sales and purchases by, 160, 162, 365
gift to, 365
liability to account, 465**AGREEMENT.** See **FRAUD—SPECIFIC PERFORMANCE.****ALIEN,**
trust for an, 271**ALIENATION,**
restraint on, 851

- ANNUITY**,
not a satisfaction, 714
- ANTICIPATION**,
restraint on, 851, 852
- APPOINTMENT**. See **POWERS**.
fraudulent, 201-3
election, in case of an, 681
satisfaction by an, 714
- APPORTIONMENT**, 622-636
- APPRENTICE FEE**,
apportionment of, 624
- APPRENTICESHIP**,
specific performance of articles of, 405
cancellation of, 819
- ARBITRATION**,
interference of equity in regard to, 440-3
- ASSETS**. See **ADMINISTRATION**.
- ASSIGNMENT**,
right to call for, 48
for benefit of creditors, 247-252
in another's name, 311-314
against public policy, 428, *et seq.*
of pay, pensions, or prize-money, 429
of pretended titles, 430
of mere naked rights to litigate, 431
of possibilities, or things in action, 432-9
what amounts to an, 435
what must be done to obtain quasi possession under an assign-
ment, 436
of mortgage, 578-582
payment to assignee of a debt, 437
assignee taking subject to equities of assignor, 439
suit against equitable assignee of a legal term, 438
of dower, 724
- AUCTIONEERS**,
purchases by, 162
- AUCTIONS**,
frauds on, 178
- AWARDS**,
disclosing grounds of, 440
not compelled, 440
enforcing, 441
setting aside, 442

B.

BANKRUPTS,

solicitors and trustees becoming purchasers, 162

BILL IN PARLIAMENT,

fraud in relation to, 142

BILL OF EXCHANGE,

destruction of, 76

BILLS OF PEACE, 747-751**BONDS,**

lost, 75

post-obit, 172

assignment of, 436

delivery up of, 738

BOUNDARIES,

settlement of, 720-3

BREACH,

of trust. See TRUST—TRUSTEES—EXECUTORS.

C.

CANCELLING, 725-738

mortgage, 587

apprenticeship, 819

CARGO,

assignment of, 433

contribution, 636

CHAMPERTY, 145, 430**CHARGE,**

what debts included, 303

trust created by, 301

devise charged with or subject to charge of debts, 301

of debts, 301-310

of legacies, 304-305 a

mode of giving effect to, 306-310

CHARITIES,

jurisdiction as to, page 141, n.

favoured in regard to the want of proper trustees, 273

defects in conveyances, 274

the objects, 275, 276

surplus income, 277

lapse of time, 278

Stat. 27 Eliz. c. 4, par. 193, *et seq.*

CHARITIES—(*continued.*)

- abroad, 279
- reward to informers as to, 280
- altering a charity, 281

CHATTELS,

- delivery of, 791

CHILDREN. See **INFANTS.**

- what children to be included, 210
- construction of provisions for younger children, 216
- removal of children from their parents, 799
- waiver of provision for, 889
- frauds on, 149, 150

COLONIAL,

- property or contracts, 54-8

COMMON,

- proceeding to establish a right of, 749

COMPENSATION,

- old rule as to, 668
- Stat. 21 & 22 Vict. c. 27, s. 1, as to damages, 668
- to a defendant, 669
- relief against penalties and forfeitures, 670-4
- no relief against liquidated damages, 675
- for a breach of covenant or condition, 676
- relief against statutory penalties or forfeitures, 677

COMPROMISE, 88

CONCEALMENT, 116-121, 176-186

CONDITION. See **CONTRACT.**

- illegal, 138, 286
- relief against breach of, 670, 676

CONFIRMATION,

- distinction between void and voidable transactions, as regards confirmation, 146, 147

CONSENT,

- refusal of consent to a marriage, 126

CONSIDERATION. See **FRAUD.**

- inadequate, 122-5
- excessive, 172-4
- conveyance without consideration, 183, 184, 193-200, 287-290
- agreement not generally enforced in the absence of a valuable consideration, 245, 421

CONSIGNMENT,

- revocableness of, 253

CONTINGENT INTERESTS,

assignment of, 433

CONTINGENT REMAINDERS,

trustees to support, 388

CONTRACT. See FRAUD—SPECIFIC PERFORMANCE.**CONTRIBUTION. See INCUMBRANCES.**

towards incumbrances, 625-631

towards charges of renewal of leaseholds, 632

between sureties, 633-5

towards a loss or expense in a voyage, 636

CONVERSION,

change in the character of property by agreement or direction
to convert, 41-7, 409, 410

undisposed of produce of real estate, 295, 296

undisposed of part of mixed fund, 297

undisposed of part of money directed to be converted, or of
the produce thereof, 298

failure of objects for, 299

of terminable or reversionary property, 359

time allowed for, 360

of infant's property, 800

CONVEYANCE,

with notice of another's title, 187-191

without consideration, and without use or trust, 287-290

in another's name, 311-314

right to call for, 48

COPIES,

of deeds, 736

COPYRIGHT,

injunctions to restrain infringements of, 772-775

COSTS,

mortgage for, 566

mortgagee's costs of suit, 521

COUNSEL,

purchase by, 162

COUNTER-CLAIM, 117, 659-663. See SET-OFF.**COVENANT,**

where distributive share is a satisfaction of an obligation
by, 52

must be fulfilled, notwithstanding accident, 67

to purchase lands, 316

to leave property, 181

COVENANT—(*continued.*)

- to settle lands, 317
- to convey, transfer, or pay money or other property, 325, 326
- to settle, charge, dispose of, or affect after-acquired property, 433
- where relief is granted as to a breach of, 670, 676

CREDITORS. See DEBTOR.

- avored, 302
- purchases by, 162
- frauds on, 185, 186
- frauds by, 164, 181
- assignments for benefit of, 247-252
- preferences of, 185, 186, 248
- payment of legatees or distributees before, 324
- where they cannot follow the assets, 382-4
- proceedings of, 468
- rights of joint creditors of a partnership, 648
- priority as between joint and separate creditors of partnership, 649
- may proceed against a deceased partner's or joint debtor's estate in the first instance, 650, 651
- election in the case of, 694
- legacies to, 712
 - by, 713
- right to benefit of securities, 654-8
- rights as against general appointee, 203

CRIMINAL PROCEEDINGS,

- suppression of, 144

CY PRES DOCTRINE, 276

D.

DAMAGES, 668-678. See COMPENSATION.

DEBTOR. See CREDITORS.

- frauds in the case of persons standing in the confidential relation of debtor, creditor, and surety, 164
- legacies by, 712
- legacies to, 713
- direction to debtor to hold for a third person, 230
- proceedings against estate of deceased joint debtor in the first instance, 650, 651

DEBTS. See SET-OFF.

- not attached in equity, 32
- what included in a charge, or trust, or power, for payment of debts, 303

DEBTS—(continued.)

- devise in trust to pay, 301
- devise charged with or subject to, 301
- indirect charge of, 302
- collateral securities for a debt assigned, 318
- due from executor, 340
- assignment of, 436
- payments to assignee of a debt, 437
- payment of mortgage debt, 479-482, 489-491, 569-572
- by breach of trust, 370-4
- operation of Statute of Limitations as regards, 474
- executor personally liable for, 382, 383
- abatement of, 471
- order of administration of different properties in payment of, 475-488
- marshalling of securities, 652, 653

DECLARATION,

- of trust, 228-230, 238

DEEDS. See MISTAKE.

- destroyed, lost, or suppressed, 71-4
- production of, by mortgagee, 526
- cancelling, delivering up, and securing, 725-738
- inspection and copies of, 736

DELIVERING UP,

- of documents, 725-738
- of chattels, 791

DEPOSIT,

- of documents, 790
- mortgage by, 592-601

DEVISEES. See WILL.

- under a will defectively executed, 69

DIRECTORS,

- remuneration, 345

DISABILITY. See INFANTS—LUNATICS—MARRIED WOMEN.

- to contract, 419
- election by persons under, 696

DISCOVERY, 905**DISTRIBUTIVE SHARE,**

- where a satisfaction of a covenant, 52

DOCTOR,

- fraud of a, 159

DOCUMENTS,

cancelling, delivering up, and securing, 725-738
inspection and copies of, 736
deposit of, 790

DOMICILE,

how far the law of domicile governs, 56, 57, 501-4

DONATIONES MORTIS CAUSA, 219-223

DOWER,

right to, 238
assignment of, 724

DURESS,

frauds on persons under, 131

E.

ELECTION,

defined, 679
at law, 680
in equity, 681-7
as to one benefit given by will, 688
need not be made in ignorance of circumstances, 690, 691
presumed, 692, 693
in the case of creditors, 694
by a person under disability, 696
in the case of a settlement, 689
in the case of a gift under a mistake, 695
by persons having separate rights as next of kin of a person
who died without electing, 697

EQUITY,

follows the law, 26-32
only assists the vigilant, 33
equal equity, 34, 68
equality is, 35
he who seeks equity must do equity, 38-40
regards as done what ought to have been done, 41-9
to a settlement. See MARRIED WOMEN.

EQUITY JURISDICTION,

where equity had exclusive jurisdiction, 7
where equity had concurrent jurisdiction, 8-14
on account of the inadequacy of the legal relief, 8
or to avoid circuity of action, or multiplicity of suits, 9
or to take due care of the rights of all, 10
or on account of the necessity for a discovery, 12
or on account of the original denial of due relief at law, 13

EQUITY JURISDICTION—*(continued).*

- or the doubtfulness of obtaining such relief, 14
- where equity had auxiliary jurisdiction, 15
- where it had no jurisdiction, 16-18

EQUITY JURISPRUDENCE. See NATURAL JUSTICE.

- definition of, 2
- true character of, 3-6
- division of, 60
- remedial equity, 61-205
- executive equity, 206-453
- adjustive equity, 454-724
- protective equity, irrespective of disability, 725-791
- protective equity, in favor of persons under disability, 792-904

EQUITY OF REDEMPTION, 513, 551-7, 605**EXECUTOR. See TRUSTEES—HEIR—NEXT OF KIN—SURPLUS.**

- may not derive a benefit, 161, 163, 365
- remuneration, 345
- fraudulent dealing with executors or administrators, 192
- sales or pledges by, 192, 382
- distinction between trustees and executors in regard to the
 - effect of joining in receipts, 367, 368
- liability, power, and duty of, 382-7
- notice to, of possible contingent liability, 393
- indebted to testator's estate, not entitled in right of wife, 888
- trust of debt due from, 340, 355-7
- right of executor to residue, 294
- time allowed for breaking up testator's establishment, 402

EXONERATION,

- of personal estate from debts, 476-488
- of specific legacy, 499

EXPECTANTS,

- dealings with, 165-173, 433

EXTINGUISHMENT,

- of mortgage, 587-9

F.**FALSIFY,**

- liberty to surcharge and falsify, 458, 459

FAMILY,

- meaning of, 233

FAMILY ARRANGEMENT, 88, 125

FINE,

proceeding to settle fine payable by copyholders, 749

FORECLOSURE, 537-9, 548, 551. See EQUITY OF REDEMPTION.

mortgagee's cost of suit, 521

FOREIGN,

property or contracts, 54-8

ignorance of foreign law, 85

assets, 501-4

judgments in foreign courts, 54

suit, injunction against, 778

FORFEITURE, 670-8**FORGED INSTRUMENTS, 734****FRAUD IN GENERAL,**

unsafe to define fraud in general, or the extent of remedial equity on the ground of fraud, 103

no relief to participator in, 36, 37

contract induced by fraud, not void, 113

where it may be enforced, 113-115

transfer of a right to complain of a fraud, 431

FRAUD, ACTUAL, .

where no relief, 105, 108

definition thereof, 104

jurisdiction in cases of, 105, 106

evidence thereof, 107, 108

division of, 110, 111

first class of actual fraud, 112

1. Misrepresentation, 112-115

2. Concealment, 116-121

3. Inadequacy, 122-5

4. Refusal of consent to a marriage, 126

second class of actual frauds, 127

1. On persons of unsound mind, 128

2. On intoxicated persons, 129

3. On persons of weak understanding, 130

4. On persons who are not free agents, but under duress, or in fear, or in prison, or in extreme necessity, 131

5. On infants, 132, 132 a

case when one of two innocent persons must suffer by the fraud of another, 133

FRAUD, CONSTRUCTIVE,

definition of, 134

four classes of constructive frauds, 135-205

frauds on public policy,

FRAUD, CONSTRUCTIVE—(continued.)

1. Marriage brokerage contracts, 136
2. Agreements to influence testators, 137
3. Contracts to facilitate marriages, 138
4. Contracts or conditions in restraint of marriage, or inconsistent with the duty of married life, 139, 140
5. Contracts or conditions in restraint of trade, 141
6. Fraud in relation to a bill in Parliament, 142
7. Contracts for public offices, 143
8. Suppression of criminal proceedings, 144
9. Champerty and corrupt considerations, 145
- frauds in the case of persons in confidential relations, 148
 1. Parent, or person *in loco parentis*, 149, 150
 2. Guardian, 151, 152
 3. Quasi guardian, adviser, or minister of religion, 153
 4. Solicitor, 154-8
 5. Doctor, 159
 6. Agent, 160
 7. Trustee, 161
 8. Counsel, agents, trustees, and solicitors of bankrupts or insolvents, auctioneers, and creditors, 162
 9. Executor or administrator, 163
 10. Debtor, creditor, and surety, 164
- frauds in the case of persons peculiarly liable to be imposed on, 165
 1. Bargains with expectant heirs, remaindermen, and reversioners, 166-171
 2. Post-obit bonds, etc., by expectants, 172
 3. Sales to expectants at exorbitant prices, 173
 4. Bargains with common sailors, 174
 5. Disposition by a person soon after attaining his majority, 175
- virtual frauds on individuals, irrespective of any confidential relation, or any peculiar liability to imposition, 176
 1. Misleading, 177
 2. Frauds on auctions, 178
 3. Unconscientious use of the Statute of Frauds, 179
 4. Clandestine marriage contracts, 180
 5. Frauds on marriages, 181
 6. Frauds on marital rights or expectations, 182
 7. Frauds under the stat. 13 Eliz. c. 5, 183, 184
 8. Frauds on creditors, parties to a composition deed, 185
 9. Mortgage, conveyance, or settlement, with notice of another's title, 187-191
 10. Fraudulent dealing with executors or administrators, 192
 11. Frauds under the stat. 27 Eliz. c. 4, 193-9

FRAUD CONSTRUCTIVE—(*continued*).

12. Frauds in the case of voluntary gifts, as against the donors themselves, 200
13. Fraudulent appointments, 201-3
14. Extinguishing consideration for a contract, 204
15. Rescinding contract, in order to benefit by flaw in title, 205

FRAUDS, STATUTE OF, 179, 228, 444, *et seq.*

FREIGHT,

- assignment of, 433, 436
- contributions, 636

G.

GAMING SECURITIES, 730

GENERAL AVERAGE, 636

GUARDIANS. See **INFANTS**.

- fraud of, 151, 152

H.

HEIR,

- promising to convey to younger brother, 31
- right to surplus interest in a term or other particular interest, 292, 293
- right to undisposed of produce of real estate, 295, 296
- right to undisposed of part of mixed fund, 297
- bargains with expectant, 166-8
- post-obit bonds by, 172
- sales to expectant heirs at exorbitant prices, 173

HEIRLOOMS,

- equity has no jurisdiction to sell heirlooms in strict settlement, except for payment of debts. *Fane v. Fane*, L. R. 2 Ch. D. 711; *D'Eyncourt v. Gregory*, L. R. 3 Ch. D. 635

HUSBAND. See **MARRIED WOMEN**.

- fraud on, 182

I.

IMPROVEMENTS,

- trust in respect of, 323

INADEQUACY, 122-5

INCUMBRANCES. See **MORTGAGES**.

- apportionment of, 625-631
- voluntary discharge of, 626
- compulsory discharge of, 627
- keeping down interest on, 628-631

INFANTS,

- jurisdiction as to, 792, 793
- appointment, removal, control, and assistance of guardians, 794-8
- religion, 796
- removal from their parents, 799
- conversion of their property, 800
- maintenance, 803-9
- foreign property of, 810
- wards of court,
 - who are, 801
 - acts affecting them, 802
 - marriage of, 811-813
 - settlement on wards of court, 814-816
 - settlement on infants who are not wards of court, 817
- care of, 818
- frauds on, 132, 132a, 149-152
- fraudulent appointments to, 202
- statute as to, 132a
- agreements by, 419
- charge by, 536
- election by, 696

INFORMATION,

- duty of trustee to give, 401

INJUNCTIONS,

- I. To restrain proceedings at law, page 388, note
 - common, page 388, note
 - special, page 388, note
 - perpetual and total, or otherwise, page 389, note
 - at any stage of the action, page 389, note
 - after judgment, page 389, note
 - when granted, page 389, note
 - not granted except against civil proceedings, page 390, note
 - to whom addressed, page 391, note
- II. In other cases :
 - jurisdiction, 756
 - different kinds, 759, 760
 - equity will not limit power of granting, 762
 - general rule as to cases where they will be granted, 761, 762
 - against waste, 761, 763-9
 - against nuisances, 770
 - against infringements of patents and copyrights, and publication of letters, 771-6
 - against application to Parliament, 777
 - against a foreign suit, 778
 - to do some act, 779

INSOLVENT,
trustees and solicitors of, becoming purchasers, 162

INSPECTION,
of deeds, 736

INTEREST,
conversion into principal, 517
increase of, 518
rent instead of, 565
keeping down, 628-631

INTERPLEADER,
at common law, 739
defined, 740
by a tenant, 741
by an agent, 743
by a sheriff, 744
connection between the titles of the two claimants, 742
ability to admit title of either claimant, 744
actual proceedings not necessary, 745
preliminaries, 746

INTOXICATED PERSONS,
frauds on, 129

INVESTMENT, 350-7, 359
non-investment, 358
on mortgage, 361

J.

JOINT PURCHASE OR MORTGAGE,
doctrine of equity in regard to, 35
implied trust on, 315

JOINT TENANCY,
limitations which would create, 315
equity leans against, 35, 315

JUDGMENT,
against trustee, 378

JUDICATURE ACTS, 20. See STATUTES.

JURISDICTION. See EQUITY.
interposition of equity in regard to property out of the jurisdiction, 54-8

L.

LACHES,
consequences of, 33, 461

LEASE,

- renewal of, by a trustee, partner, mortgagee, etc., 333-5
- person having a limited interest, 334, 335
- by a mortgagee, 514
- to a mortgagee, 519

LEASEHOLD,

- mortgage of, 564
- charges of renewal of, 632
- leaseholds not within 17 & 18 V. c. 113, 483

LEGACIES,

- jurisdiction as to, 206, 207
- charge of, 304-305a
- payable at a future day, 208
- specific legacy to one for life, remainder to another, 209
- for a purpose which cannot be accomplished, 211
- construction of, 217, 218
- abatement of, 471
- out of what payable, 476-8
- ademption of, 705-713
- to creditors, 712
- to debtors, 713

LEGATEES,

- under a will defectively executed, 69

LETTERS,

- injunction to restrain the publication of, 776

LIEN,

- in general, 613
- of a consignee, 614
- of a vendor, 327-332
- of a solicitor, 616, 617
- of a joint tenant, 618
- of a trustee, 619
- of annuitants, 620
- of a legatee, 621
- how enforced, 615

LIMITATIONS, STATUTE OF,

- how far equity followed the law as to, 31
- operation of, as regards debts, 431
- as regards trusts, 278

LITIGATION,

- protection from, 725-738
- assignments of mere naked rights to litigate, 431

LOST,

- deeds, etc., 71-6

LUNATICS AND OTHER PERSONS OF UNSOUND MIND,
 frauds on, 128

M.

MAINTENANCE AND CHAMPERTY, 430

MAINTENANCE OF CHILDREN, 803-9

MANAGER, 520, 522, 523, 643

MARRIAGE,

- refusal of consent to a, 126
- brokerage contracts, 136
- contracts to facilitate, 138
- contracts or conditions in restraint of, 139
- clandestine marriage contracts, 180
- frauds on, 181
- frauds on marital rights, and expectations, 182
- articles, execution of, 246
- on the faith of a promise, 448, 450

MARRIAGE SETTLEMENT. See ACCIDENT—FRAUD—INFANTS—MARRIED WOMEN—MISTAKE, ETC.

MARRIED WOMEN,

- mortgage by, 320, 574, 575
- agreements by them not enforced, 419
- election by, 696
- common-law doctrine as to, 820
- powers which husband and wife have, in equity, of contracting with, and giving and granting to, each other, 822-5
- contracts before marriage, 822
- contracts after marriage, 823
- gifts and grants after marriage, 824, 825
- pinmoney, 826, 827
- paraphernalia, 828, 829
- separate estate, 830-868
 - means of acquiring it,
 - by gift, grant, devise, or settlement, 830
 - by separate earnings, 831, 834
 - by agreement after marriage, 831
 - by order of protection or judicial separation, 832, 833
 - under the stat. 33 & 34 Vict. c. 93, 834-845
 - separate earnings, 834
 - deposits in savings' banks, 835, 839
 - funded property, 836, 839
 - property in a joint stock company, 837, 839
 - shares or benefits in a society's funds, 838
 - personalty accruing during marriage, 840
 - realty, 841

MARRIED WOMEN—(continued.)

- separate estate, means of acquiring it.
 - benefits under an insurance, 843, 844
- how questions as to ownership of property to be settled 842
- married women may maintain an action, 845
- wife's power of disposing of, 846-850
 - restrictions against alienation or anticipation, 851-3
 - gifts to the husband by the wife, 854
- husband's receipt of the income, 855
 - liability of, 856-8
- power of trustees of the wife's personalty not settled to her separate use, 869
- wife's equity to a settlement out of her own property, 869-891
 - when defendant against her husband, 871-5
 - against his trustees or vendees, 876-881
 - when plaintiff, 882
 - no equity out of past income, 880
 - life interest in wife's personalty, 879
 - amount to be settled, 883
 - substitute for a settlement where fund is small, 884
 - waived, lost or suspended, 885-9
 - where parties are domiciled in Scotland, 890
- wife's right of survivorship, in regard to reversionary interests, 881
- wife's equity to a maintenance, in case of husband's misconduct, bankruptcy, or insolvency, 891
- indebtedness of wife before her marriage, 859-866, 875
- deeds of separation, 892-8
- non-disclosure of antenuptial incontinence, 899
- benefits under settlement not forfeited by adultery, 900
- purchases of, 901
- frauds of, 902, 903
- money advanced for support of deserted wife, 904

MARSHALLING, 829

- of assets, 493
 - in favor of mortgagees, and other creditors, or of legatees, or of a portionist, or of the heir, or of a devisee, 494
 - as between freehold and copyhold, 495
 - as between legacies charged on land and others not so charged, 496
 - in the case of charitable legacies, 496, 497
 - as between simple contract debts and a vendor's lien, 498
 - in favor of widow's paraphernalia, 500
- of securities, 652, 653

MAXIMS, GENERAL, 21-59

- no right without a remedy, 22
- where equity will give a remedy, 23-5
- equity follows the law, 26-32
- necessity for vigilance, 33
- where equal equity, law prevails, 34
- equality is equity, 35
- plaintiff must have clean hands, 36, 37
- plaintiff must do equity, 38-40
- equity regards as done what ought to be done, 41-9
- priority, 50
- equity imputes intention to fulfil obligation, 51
- loss must be borne by person occasioning it, 53
- rules as to foreign and colonial property or contracts, 54-8
- interference of courts of law with decisions of courts of equity, 59

MESNE PROFITS, 665**MIND. See LUNATICS.**

- frauds on persons of weak understanding, 130

MINISTER OF RELIGION,

- constructive fraud by, 153

MISDESCRIPTION,

- slight, 412
- substantial, 415

MISLEADING, 177**MISREPRESENTATION, 87, 112-115****MISTAKE.**

- defined, 80
- by the sufferer alone, 81-4
- mutual, 87
- in or in regard to a written instrument, 89-102
- ignorance of foreign law, 85
- of vendor as to value, 86

MORTGAGE,**I. *Mortgages of real property*, 505-591**

- what may be mortgaged, 505
- what amounts to, 506-512
- mortgagee's estate, 513
- mortgagee's possession, leases, receiving of rent, 514, 515
- limit to mortgagee's advantage, 516
- conversion of interest into principal, 517
- increase of interest, 518
- lease to mortgagee, 519
- what mortgagee may add to his debt, 520, 521

MORTGAGE—*(continued).*

- allowance for receiver, 522
- of West India estate, 523
- of advowson, 524
- pre-emption, 525
- production of deeds by mortgagee, 526
- right of mortgagee to devise property, 527
- mortgagee, ejecting or refusing tenant, 528
- mortgagee's right to cut timber and open mines, 514
- priority, 529-534
- tacking, 529-534
- with notice of another's title, 187-191
- postponement of prior mortgagee, 535, 536
- protection of subsequent mortgagees against prior voluntary conveyances, 193-9
- mortgagee's remedies, 537
- foreclosure, 537-9
- sale, 540-7
- concurrent remedies, 548-550
- mortgagor's estate and rights, 551
- equity of redemption, 551-7
- who may redeem, 555-7
- annual rests, 558
- possession by mortgagor, 559, 560
- rents received by mortgagor, 559
- waste by him, 559
- expenditure by mortgagee, 561
- of leasehold, 562-4
- rent instead of interest, 565
- for costs, 566
- conveyance in trust to sell, 567
- joint, 315
- defective, 568
- payment of debt, 569-572
 - to be postponed till a certain time, 571
 - out of what, 479-482
 - contribution towards, 625-7
- Welsh mortgage, 573
- of wife's estate, 320, 574, 575
- first mortgagee answerable to second, 576
- disputing mortgagor's title, 577
- assignment of, 578-582
- what a purchaser of a mortgage can claim, 583
- gift of mortgage security, 584
- devise by a mortgagee, 585
- right of purchaser of equity of redemption, 586
- right of second equitable mortgagee, 586
- extinguishment of debt by cancelling, 587

MORTGAGE—(continued.)

- by payment or by merger, 588, 589
- reconveyance, 590
- death of mortgagor intestate, and without heirs, 591
- II. *Equitable mortgages of real property*, 592-601
- III. *Mortgages and pledges of personal property*, 602-612
 - a mortgage and a pledge distinguished, 602
 - tacking, 603-604
 - purchase by a second mortgagee under a power of sale from the first, 545
 - mortgagor's right to redeem and mortgagee's right to sell, 605
 - mortgage of shares, 606
 - of a ship, 607-9
 - pledgor's right of redemption, 610
 - pledgee's rights, 611, 612

N.

NATURAL JUSTICE. See **EQUITY.**

- equity is not synonymous with, 3-5
- large portion of it is left to conscience, 6
- another large portion was administered in courts of law, 6
- equity is only a portion of natural justice in a modified form, 6

NE EXEAT REGNO, 780-4**NEXT OF KIN,**

- right of, 293-8
- claims of, 384

NOTES, LOST, 76**NOTICE,**

- two kinds of, 189
- what is, 190
- conveyance, mortgage, or settlement, with notice of another's title, 187-191
- to executor of possible contingent liability, 393
- notice of assignment, 436, 437
- notice of incumbrance, 535

NUISANCES,

- injunctions to restrain, 770

O.

OBLIGATION,

- fulfilment of, 51

OFFICERS,

assignment by officers of government, 429
notice, 436

OFFICES,

contracts for, 143

P.**PARAPHERNALIA, 828, 829**

marshalling in favor of, 500, 829

PARENT,

frauds of, or on a parent or person standing *in loco parentis*,
149, 150
removal of children from, 799

PAROL CONTRACTS,

where enforced, 444-8

PAROL PROMISE,

where enforced, 450

PAROL VARIATIONS OR ADDITIONS, 449**PARTITION,**

suit for a partition of property out of jurisdiction, 54
mode of partition, 715
title shown, 716
by or against tenants who have limited interests, 717
equitable adjustments, 719
of partnership leaseholds, 644

PARTNERSHIP,

jurisdiction, 637
specific performance of agreement to enter into, 638
carrying into effect the articles of, 638
dissolution of, 640, 641
application of articles after cesser of term, 639
injury prevented, 642
account, manager, and receiver, 643
partition, 644
using stock after dissolution, 645
interest after dissolution, 646
property held for partnership purposes, 315, 647
rights of joint creditors, 648
priority as between joint and separate creditors, 649
creditors may proceed against a deceased partner's estate in
the first instance, 650

PATENTS,

injunctions to restrain infringements of, 771

- PAYMENT,**
 - into Court or to the party, 789
- PAYMENTS,**
 - appropriation of, 464
- PEACE,**
 - bills of, 747-751
- PENALTIES,**
 - payment of, 453, 670-8
- PINMONEY,** 826, 827
- PLEDGES,**
 - distinguished from mortgages of personal property, 602
 - pledgor's right of redemption, 610
 - pledgee's rights, 611, 612
- POLICY, PUBLIC,**
 - frauds on, 135-147
 - assignments, contracts, and covenants against, 428, *et seq.*
- PORTIONS,**
 - what is a portion, 212
 - where not to be raised, 213, 214
 - time for raising, 215
 - interest, 215 a
 - satisfaction of, 704-711
- POSSIBILITIES,**
 - assignment of, 432, 433
- POST-OBIT BONDS,** 172
- POWERS,**
 - relief in cases of the defective execution or non-execution of, 31, 77-9, 99
 - effectuating the general intention of the donor of a power, 283, 284
- PREFERENCE,**
 - of a particular creditor, 185, 186
- PRETENDED TITLES,** 430
- PRIMOGENITURE,**
 - equity follows the law as to, 31
- PRIORITY,** 529-536
- PROMISE.** See SPECIFIC PERFORMANCE.

PURCHASE,

- with notice of another's title, 187-191
- in another's name, 311-314
- joint, 315
- covenant or trust to purchase lands, 316
- of a mortgage, 583
- of a lien or mortgage by a trustee, 833
- of an estate by a trustee or agent, 333, 365
- money to be paid out of personal estate, 411
- with right of repurchase, 506-512
- of an equity of redemption, 586
- from an executor or administrator, 192

PURCHASER,

- for valuable consideration, rights of, 34, 68, 89, 344, 376-381
- protection of subsequent, 193
- purchaser's heir may require the money to be paid out of the personal estate, 411
- his obligation to see to the application of the purchase-money, 257-266

Q.**QUIA TIMET, 725****R.****RECEIPTS,**

- distinction between trustee and executors as regards joining in, 367, 368

RECEIVER,

- gift to, 365
- appointment of, 643, 761, 785, 786
- office, possession, and power, 787, 788
- allowance to mortgagee for, 522

RECONVEYANCE, 590**RECTIFYING. See MISTAKE.****REDEMPTION. See MORTGAGE.****"RELATIONS,"**

- meaning of, 233

RELEASE,

- rectifying, 97
- of sureties, 654-8

REMAINDERMEN,

- bargains with, 165-171

- REMITTANCE,
revocableness of, 253
 - RENEWAL,
of lease, by a person having a limited interest, 334, 335
 - RENT,
obligation to pay, notwithstanding accident, 67
 - RENTS,
where a suit will be entertained for the recovery of, 25
 - REPAIRS,
covenant to do, 67
trust in respect of, 323
 - REPURCHASE,
purchase, with right of, 506-512
 - RESIDUE,
undisposed of, 291-300
 - RESTS, 365, 558
 - REVERSIONERS,
bargains with, 165-171
cannot maintain suit for partition, 718
 - REVOCATION,
want of power of, 200
- S.
- SAILORS,
frauds on, 174
 - SALE,
omission to sell, 349
by a mortgagee, 540-550, 605
conveyance in trust to sell, 567
frauds on auctions, 178
 - SATISFACTION,
defined, 698
where arising, 699-702
rebutted, 703
of portions secured by settlement, 704-7
of portions left by will, 708, 709
none in the case of strangers, 710, 711
of legacies to creditors, 712
of legacies to debtors, 713
of annuity, 714
of covenant to settle lands, 714
of covenant to bequeath, 714
order of, 489-492

SECURING,

of documents, 737

SECURITY,

in another's name, 311-314

lost unsealed securities, 76

marshalling of securities, 652, 653

mutual right to the benefit of, between creditor and sureties, 654-8

delivery up of, 738

SEPARATION,

deed of, 892-8

SEPARATE USE. See MARRIED WOMEN.**SET-OFF,**

connected accounts, 660

independent debts or demands, 661

where one debt is joint and the other separate; 662

demands in different rights, 663

SETTLEMENT. See MARRIED WOMEN—MARRIAGE SETTLEMENT—INFANTS.

rectifying, 89-96

with notice of another's title, 187

setting aside, 732, 733

voluntary. *See* CONSIDERATION.

SHERIFF,

interpleader by, 744

SOLICITOR,

actual fraud of a, 112

constructive fraud of a, 154, 157

misappropriation of mortgage debt paid to, 572

purchase by, 162

acting for both parties, 190, 616

lien for costs, 616, 617

gifts or gratuity to a, 155-7

charges by a trustee who is a, 345

SPECIFIC PERFORMANCE,

remedy at law, 403, 406

decree in equity where damages would not afford compensation, 404, 405

between persons claiming under the parties, 411

where terms are not complied with in non-essential particulars, or where there is a slight misdescription, 412

where there is a want of title, or a substantial misdescription, or want of reasonable compliance with terms of agreement, 415, 416

SPECIFIC PERFORMANCE—(*continued.*)

- where there is an accidental incapacity of performing the remainder of an agreement, 417
- sub modo*, 418
- where the parties were incompetent to contract, 419
- where the terms are not certain and definite, 420
- where there is no valuable consideration, 421-3
- where it would be morally wrong or inequitable, 424-7
- of assignments, contracts, or covenants against public policy, 428, *et seq.*
- assignments by officers of the government, 429
- assignments involving champerty, maintenance, or buying of pretended titles, 430
- assignments of mere naked rights to litigate, 431
- assignments of possibilities, or things in action, 432-9
- connected with arbitration, 440-3
- parol contracts, 444-8
 - variations or additions, 449
 - promises, 450
- agreements to borrow, 451
- negative agreements, 452
- not avoidable by payment of penalty, 453
- of agreement to enter into a partnership, 638

STATUTES,

- 27 Henry VIII, c. 10 (Uses), 231
- 32 Henry VIII, c. 9 (Pretended Titles), 430
- 13 Elizabeth, c. 5 (Fraudulent Conveyances), 183
- 27 Elizabeth, c. 4 (Fraudulent Conveyances), 193, 254
- 21 Jac. I, c. 16 (Limitations), 461, 462
- 29 Car. II, c. 3 (Frauds), 179, 228, 444-9
- 9 Geo. II, c. 36 (Mortmain), 496
- 1 Wm. IV, c. 40 (Residue), 294
 - c. 60 (Trustees), 401
 - cc. 60, 65 (Infants), 818
- 1 and 2 Wm. IV, c. 58 (Interpleader), 739
- 3 and 4 Wm. IV, c. 27, ss. 24, 28 (Statute of Limitations), 278, 539, 551
- 3 and 4 Wm. IV, c. 104 (Debts), 22, 494
 - c. 105, s. 2 (Dower), 552
- 7 Wm. IV, and 1 Vict. c. 26 (Devise to Heir), 683
 - c. 28 (Statute of Limitations), 539
- 1 and 2 Vict. c. 110 (Judgments), 529, 531
- 7 and 8 Vict. c. 76 (Receipts), 266
 - c. 76, s. 9 (Reconveyance of Mortgaged Estate), 590
- 8 and 9 Vict. c. 106 (Contingent Interests), 432
 - c. 106, s. 1 (Reconveyance of Mortgaged Estate), 590
- c. 112 (Terms), 241

STATUTES—(*continued.*)

- 9 and 10 Vict. c. 95, s. 65 (Legacies), 207
- 10 and 11 Vict. c. 96 (Trusts), 401
- 12 and 13 Vict. c. 74 (Trusts), 401
- 13 and 14 Vict. c. 60 (Trusts), 401
 - c. 60 (Infants), 818
 - c. 60, ss. 19, 20 (Reconveyance of Mortgaged Estate), 590
 - c. 60, s. 30 (Partition), 715
 - c. 61, s. 1 (Legacies), 207
- 15 and 16 Vict. c. 55 (Trusts), 401
 - c. 55 (Infants), 818
 - c. 76, ss. 219, 220 (Redemption), 513, 551
 - c. 86, s. 48 (Sale of Mortgaged Estate), 540
 - c. 137 (Charities), page 141, n.
- 17 and 18 Vict. c. 90 (Usury), 40
 - c. 104 (Shipping), 609
 - c. 113 (Mortgage Debts), 481-4
 - c. 125, ss. 79-82 (Injunctions), 757
- 18 and 19 Vict. c. 124 (Charities), page 141, n.
- 19 and 20 Vict. c. 99, s. 5 (Sureties), 655
 - c. 120 (Infants), 818
- 20 and 21 Vict. c. 57 (Reversionary Interests), 881
 - c. 77, s. 23 (Legacies—Residues), 207, 466
 - c. 85, ss. 21, 25 (Separate Use), 831, 832
- 21 and 22 Vict. c. 27 (Damages), 668
 - c. 27 (Trial of Questions of Fact), 755
 - c. 108, s. 8 (Separate Use), 832
- 22 and 23 Vict. c. 35 (Trusts), 401
 - c. 35, ss. 4-6 (Forfeiture), 676
 - c. 35, s. 12 (Appointments), 77
 - c. 35, s. 13 (Sales under Powers), page 44, n.
 - c. 35, s. 23 (Receipts), 266
 - c. 35, s. 29 (Notice for Creditors), 383, 384
 - c. 35, s. 30 (Directions to Trustees, etc.), 385
 - c. 35, s. 31 (Reimbursement), 345, 369
 - c. 35, s. 31 (Indemnity), 369
 - c. 35, s. 32 (Investments), 351
- 23 and 24 Vict. c. 38, s. 1 (Judgments), 648
 - c. 38, ss. 10-12 (Investments), 351, and n.
 - c. 38, s. 145 (Trusts), 401
 - c. 126, s. 2 (Forfeiture), 676
 - c. 134 (Charities), page 141
 - c. 136 (Charities), page 141
 - c. 145 (Powers of Mortgagees), 513, 522
 - c. 145 (Investments), 351
 - c. 145, ss. 12, 29 (Receipts), 266
 - c. 145, ss. 17-24 (Receiver), 785

STATUTES—(continued.)

- 23 and 24 Vict. c. 145, s. 26 (Maintenance), 803
 c. 145, ss. 27, 28 (Trustees), 396
 c. 145, s. 30 (Powers of Executors), 382
- 25 and 26 Vict. c. 42 (Questions of Law and Fact), 755
 c. 63, s. 3 (Mortgages of Ships), 609
- 28 and 29 Vict. c. 99, s. 1, 8 (Injunctions), 758
- 30 and 31 Vict. c. 48 (Auctions), page 482
 c. 69 (Mortgage Debts), 485
 c. 132 (Investments), 351
 c. 144 (Life Assurance), 432
- 31 Vict. c. 4 (Purchase of Reversions), 170, 171
- 31 and 32 Vict. c. 40 (Partition), page 473
 c. 86 (Marine Insurance), 432
- 32 and 33 Vict. c. 110 (Charities), page 141, n.
- 33 and 34 Vict. c. 28 (Solicitors), 157
 c. 93 (Married Women), 820, 823, 834–845,
 859, 860, 867, 868
- 34 Vict. c. 27 (Investments), 351
- 36 Vict. c. 12, s. 1 (Custody of Infant), 797
- 36 and 37 Vict. c. 66 (Judicature), par. 20, and page 486
 c. 66, s. 24 (7) (Concurrent Jurisdiction), 20
 c. 66, s. 25 (Changes in certain points of Jurisprudence), par. 20, and page 490 *et seq.*
 c. 66, s. 25 (2) (Statutes of Limitation), 268
 c. 66, s. 25 (3) (Waste), 319 a
 c. 66, s. 25 (4) (Merger), page 491
 c. 66, s. 25 (5) (Suits for possession by Mortgagees), page 491
 c. 66, s. 25 (6) (Assignment of Debts and Choses in Action), page 492
 c. 66, s. 25 (7) (Stipulation not of the Essence of Contracts), page 493
 c. 66, s. 25 (8) (Injunctions and Receivers), page 493
 c. 66, s. 25 (9) (Collisions at Sea), page 494
 c. 66, s. 25 (10) (Custody and Education of Infants), page 494
 c. 66, s. 25 (11) (Cases of Conflict not Enumerated), par. 20, and page 494
- 37 and 38 Vict. c. 50 (Married Women), 860–6
 c. 62, s. 1 (Infants), 132 a
 c. 78, s. 4 (Reconveyance of Mortgaged Estate), 590
 c. 78, s. 7 (Priority, Tacking), 532
- 38 and 39 Vict. c. 77, s. 10 (Administration), 472
 c. 87 (Priority, Tacking), 532

STATUTES—(*continued.*)

39 and 40 Vict. c. 17 (Partition), page 472

40 and 41 Vict. c. 34 (Extension of Locke King's Act), 486

STOCK,

reduction of, 63

SUB-PURCHASE, 431**SURCHARGE AND FALSIFY,**

liberty to, 458, 459

SURETIES,

contribution between, 633-5

rights of creditors and sureties, 164, 654-8

SURPLUS,

right of heir or next of kin or executor to, 285-299

T.**TACKING, 529-534, 603, 604****TENANT,**

interpleader by, 741

TERM OF YEARS,

trusts of, 239-243

TESTATORS,

agreement to influence, 137

TESTIMONY,

bill to perpetuate, 908

bill to take testimony *de bene esse*, 912**TIMBER,**

trust as to, 319

TIME,

where time is of the essence of a contract, 413

stipulations as to, 414

TITHES AND MODUSES, 667**TITLE,**

muniments of, 394, 395

want of, 415, 416

buying a pretended, 430

TRADE,

contracts or conditions in restraint of, 141

TRUSTS IN GENERAL,

- definition of, 224
- division of, 226
- extent of jurisdiction over, 225

TRUSTS, EXPRESS PRIVATE,

- defined, 227
- mode of declaring, 228-230
- by what words created, 231-3
- how a devise or bequest may be verbally impressed with a trust, 234
- intended trust, though void, excludes donee from taking beneficially, 235
- executed and executory, 30, 236, 237
- governed by the same rules as legal estates, 238
- of terms for years, 239-243
- created without *cestui que trust's* knowledge, 244
- what will be enforced, 245
- execution of marriage articles, 246
- assignment for benefits of creditors, 247-252
- revocableness of a consignment or remittance, 253
- revocableness of a conveyance of equitable property, or a declaration of trust in favor of a volunteer, 254, 255
- effect of a direction or power to raise money out of rents for debts, etc., or of a charge, 256
- bar of, 267
- performed as to the main intent, 269
- where legal and equitable estates have no separate existence, 270
- for an alien, 271

TRUSTS, EXPRESS CHARITABLE. See CHARITIES.**TRUSTS, IMPLIED,**

- sometimes called constructive trusts, 321
- defined, 282
- in a power, 283, 284
- where trusts fail or the property is unexhausted, 285
- on an absolute gift, with an ineffectual or partial trust, or a void condition, 286
- on a conveyance without a consideration, and without a use or trust, 287-290
- on a limitation of a particular interest only, 291-3
- of undisposed of residue of testator's personality, 294
- of undisposed of produce of real estate, 295, 296
- of undisposed of part of mixed fund, 297
- of undisposed of part of money directed to be converted, or of the produce, 298
- failure of objects for conversion, 299, 300

TRUSTS, IMPLIED—*(continued.)*

- charges, 301-310
 - on conveyance, assignment, or security in another's name, 311
 - on purchase or transfer of stock or delivery of money, 312
 - on limitations which would create a joint tenancy at law, 315
 - on covenant or trust to purchase lands, 316
 - on covenant to settle lands, 317
 - of collateral securities for a debt assigned, 318
 - of ornamental timber, 319, 319a
 - of wife's mortgaged property, 320

TRUSTS, RESULTING, 285-300, 311-314**TRUSTS, CONSTRUCTIVE,**

- defined, 322
- in respect of repairs or improvements, 323
- in favor of creditors, 324
 - on a covenant or agreement to convey, transfer, or pay money or other property, 325, 326
 - vendor's lien for unpaid purchase-money, 327-332
 - of lease, of which a renewal is obtained by a person having a limited interest, 334, 335
 - on a wrongful conversion or alienation of trust property, 336-8
 - of mortgaged estate, 339
 - of debt due from executor, 340

TRUSTEES,

- who may be, 341
- acceptance of office of, 342
- profits by, 161, 333, 365
- gifts to, 161, 365
- purchase by, 162, 333, 365
- devolution or delegation of trust, 343
- equity never wants a trustee, 344
- no remuneration allowed, 345
- expenses allowed, 345
- what care and diligence they are bound to use, 346-8
- omission to sell, 349
- investment, 350-4
 - omission of one trustee or executor to see that the property is duly secured or applied, 355, 356
 - losses without want of customary care or diligence, 357
 - non-investment, 358
 - terminable or reversionary property, 359
 - time allowed for conversion, 360
 - investment on mortgage, 361
 - may not mix the trust money with their own, 362, 363
 - responsibility for each other's acts and defaults, 366

TRUSTEES—(*continued.*)

- distinction between trustees and executors in regard to the effect of joining in receipts, 367, 368
- indemnity, 392 a, 399
- indemnity clause, 369
- breach of trust by, 369-381
- acquiescence in a breach of trust, 373
- debt by breach of trust is a simple contract debt, 374
- default by trustee who is a beneficiary, 375
- power to bind the estate by a sale, transfer, mortgage, or specific lien, 376-380
- judgment against, 378
- to support contingent remainders, 388
- aid and direction to, 385, 389
- safety of, 390-3
- possession of muniments of title, 395
- removal of, 396
- appointment of, 396, 397
- where trustees took the fee, 398
- conveyance of legal estate to *cestui que trust*, 399
- settlement of accounts, 400
- duty of keeping accounts and rendering information, 400, 401
- in bankruptcy or insolvency, 876-8, 891

U.

USURIOUS TRANSACTIONS, 40, 729

V.

VENDOR,

- vendor's lien, 327-332
 - nature of and reasons for, 327
 - where it originally exists, 328
 - continuance thereof, 329
 - against whom it exists, 330-2
- misrepresentation or concealment by, 112-121

VIGILANTIBUS,

- non dormientibus equitas subvenit*, 33

VOID AND VOIDABLE CONTRACTS AND INSTRUMENTS. See FRAUD.

- distinction between, as regards confirmation, 146
- cancelling, 725-738

VOLUNTARY. See **CONSIDERATION.**

VOLUNTEER. See **CONSIDERATION.**

rights of, 49

when a collateral relation not a, 198

fraud of, 200

revocableness of a conveyance of equitable property, or a

declaration of trust in favor of a volunteer, 254

when voluntary deed cancelled, or enforced, 731-3

W.

WARDS. See **INFANTS.**

WASTE,

injunctions to restrain, 319, 763-8

by a mortgagor, 559

by a mortgagee, 514

account in cases of, 666

equitable, 319, 319 a, 766-8

WEAK UNDERSTANDING,

frauds on persons of, 130

WELSH MORTGAGE, 573

WEST INDIA ESTATE,

mortgage of, 523

WIFE. See **MARRIED WOMEN.**

WILL,

defective execution of a will not remedied, 69

agreements to influence a testator, 137

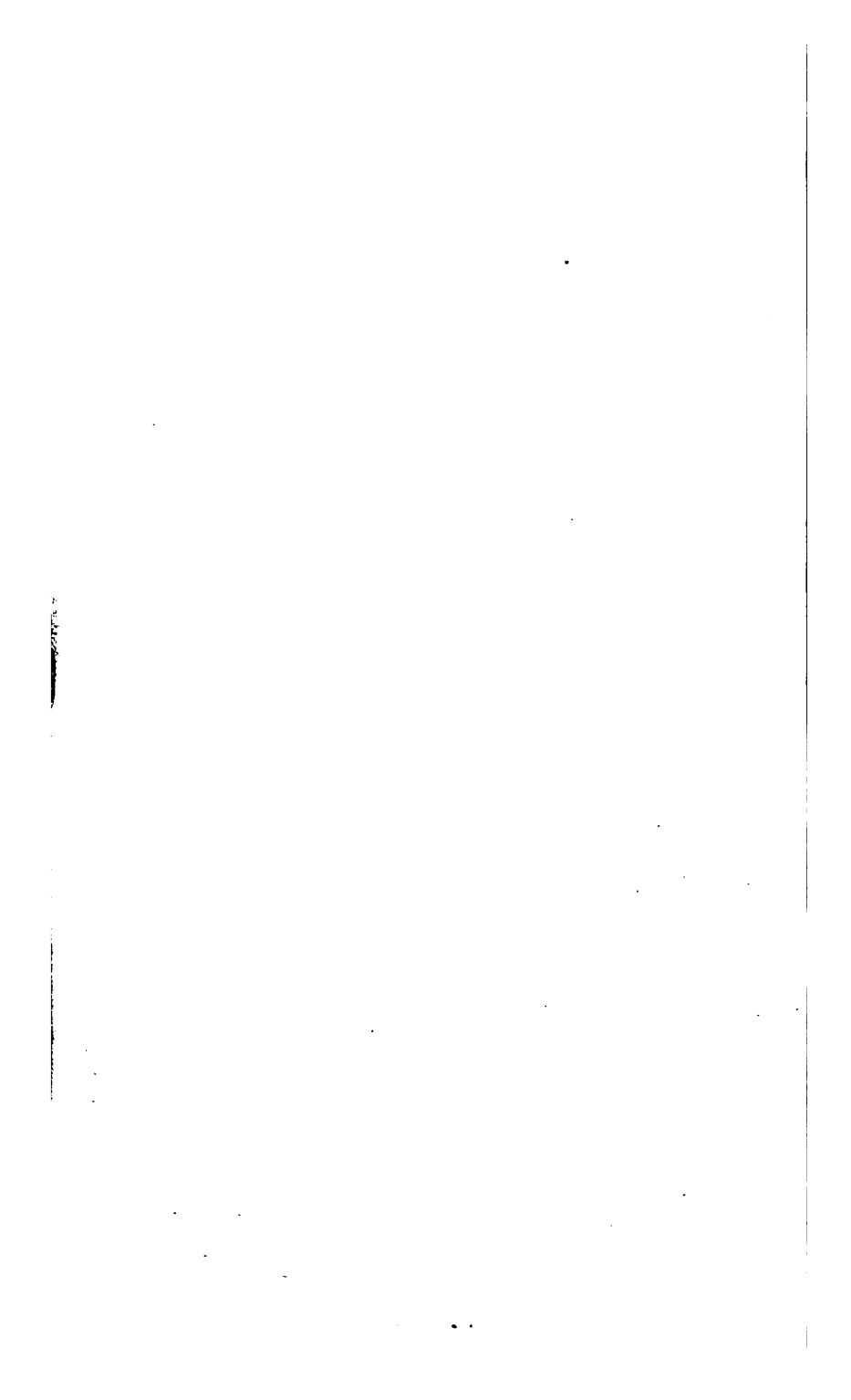
proceedings to establish wills, 752-5

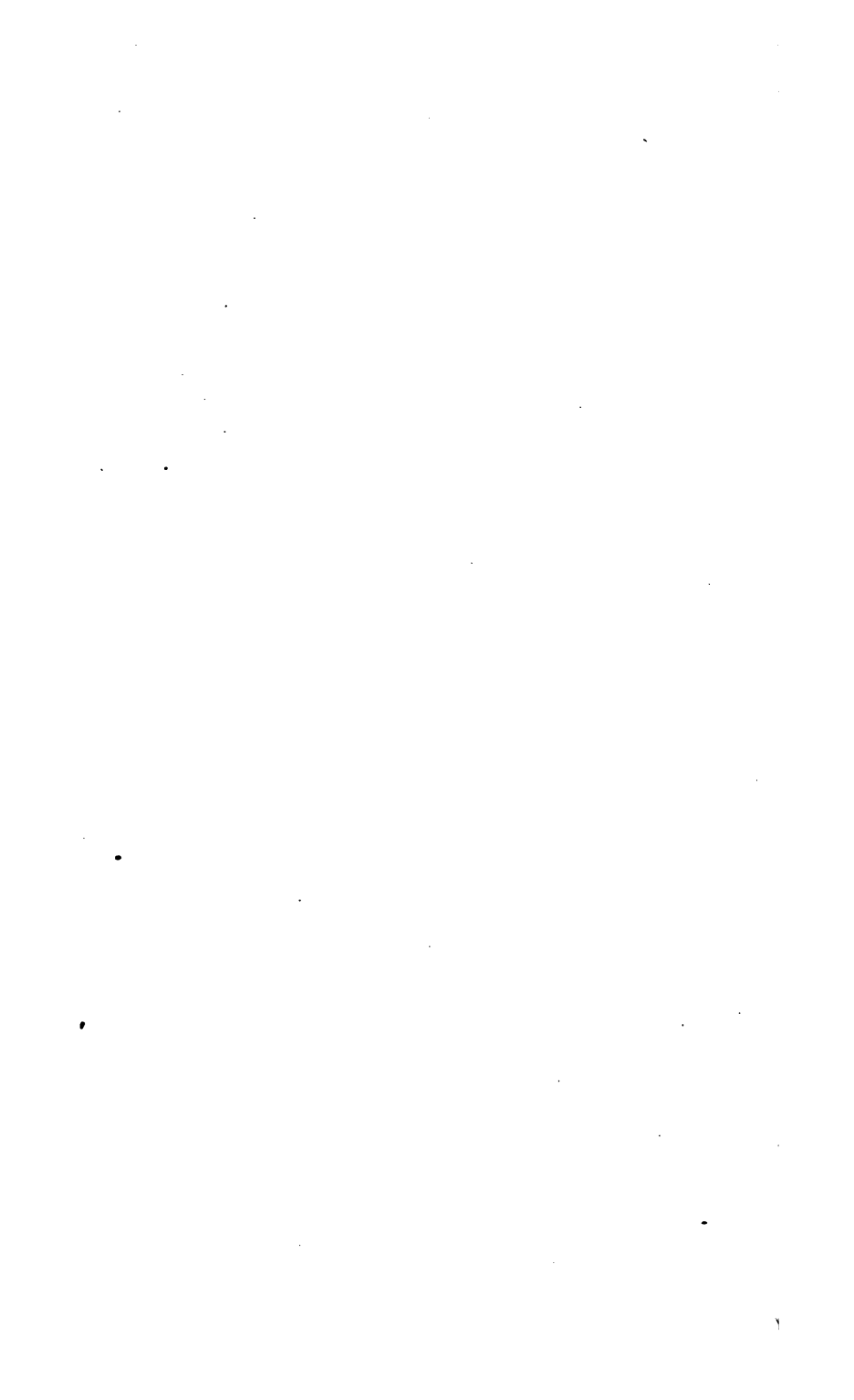
mistake or omission in, 100

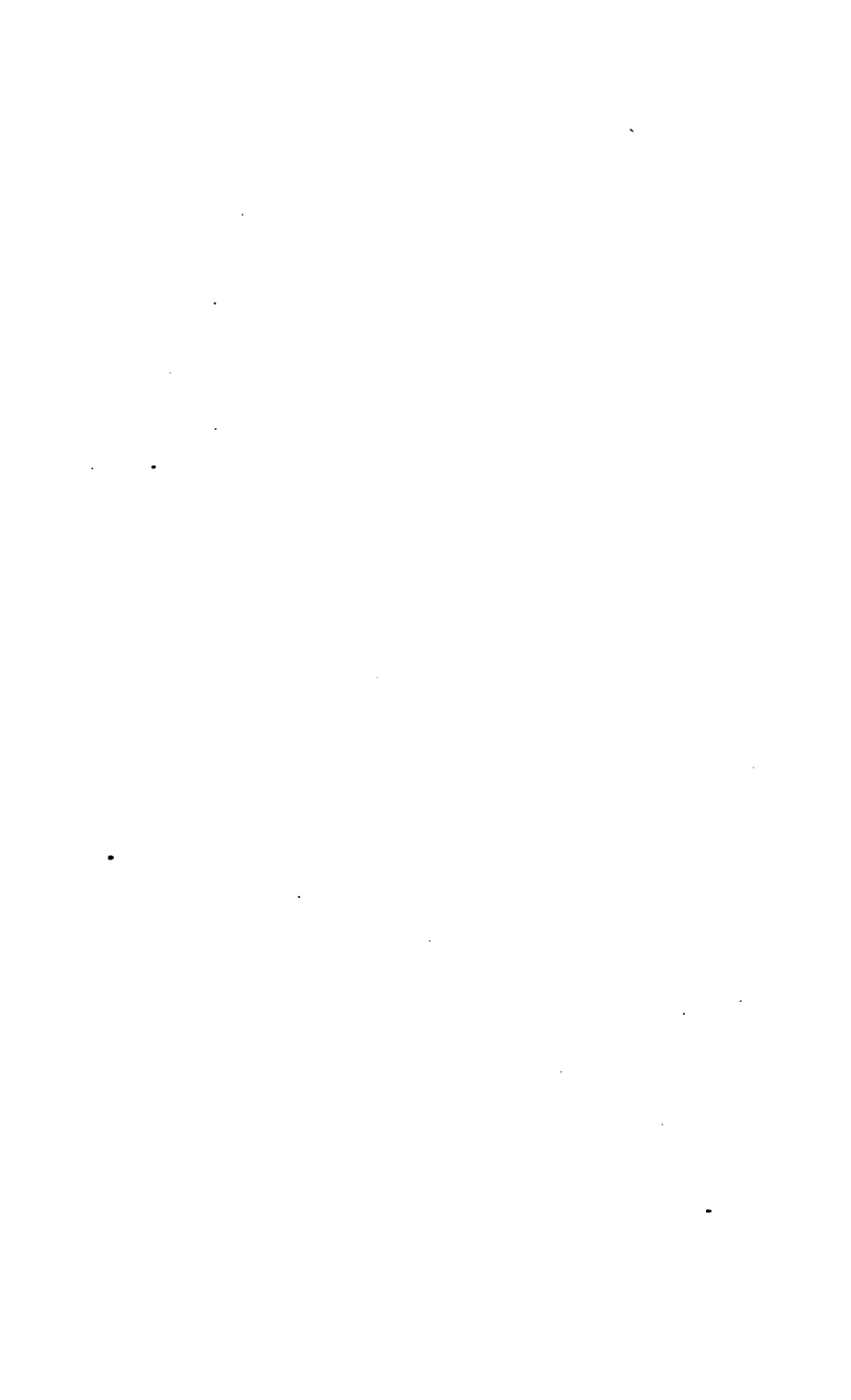
fraud in regard to, 105

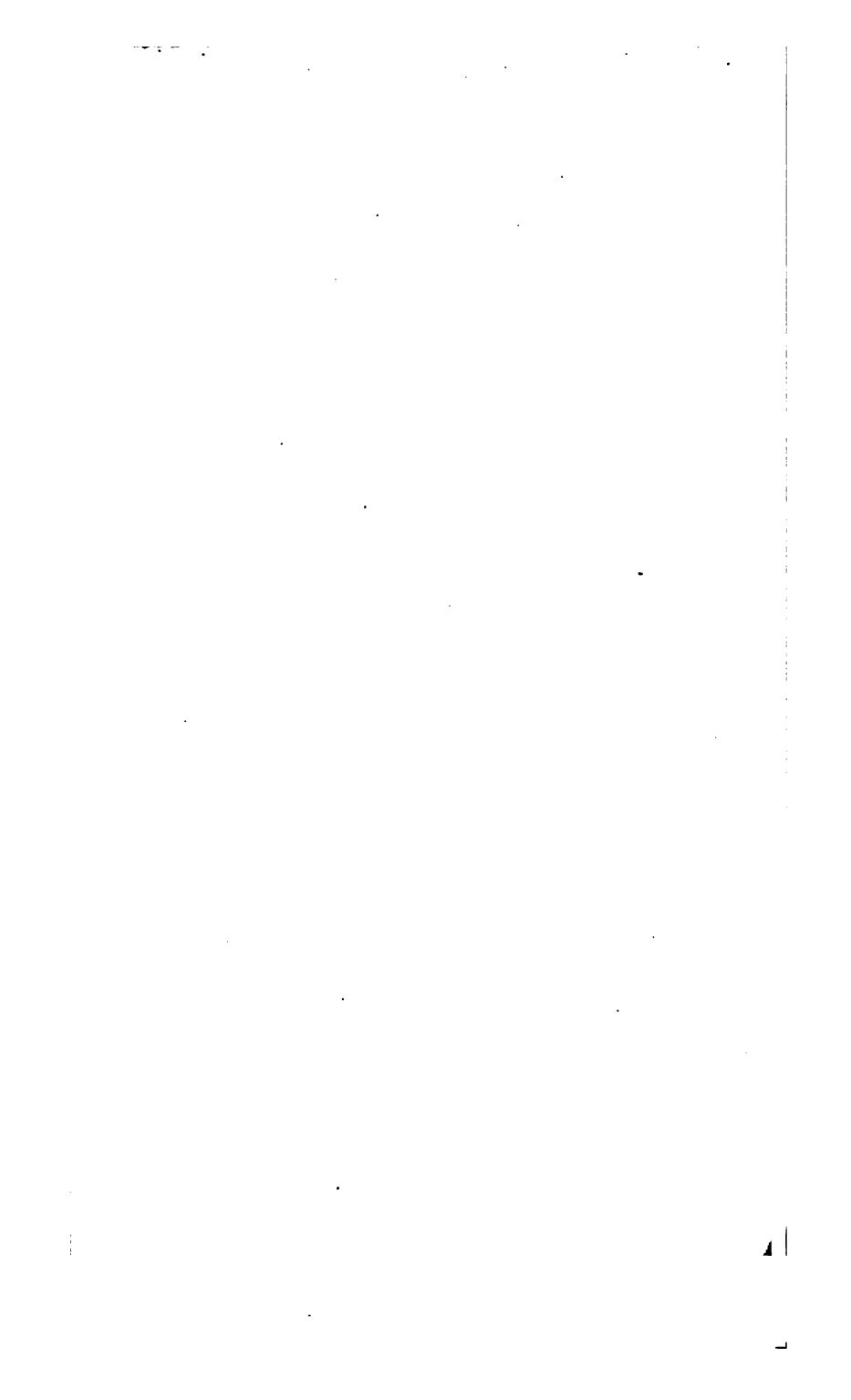
THE END.





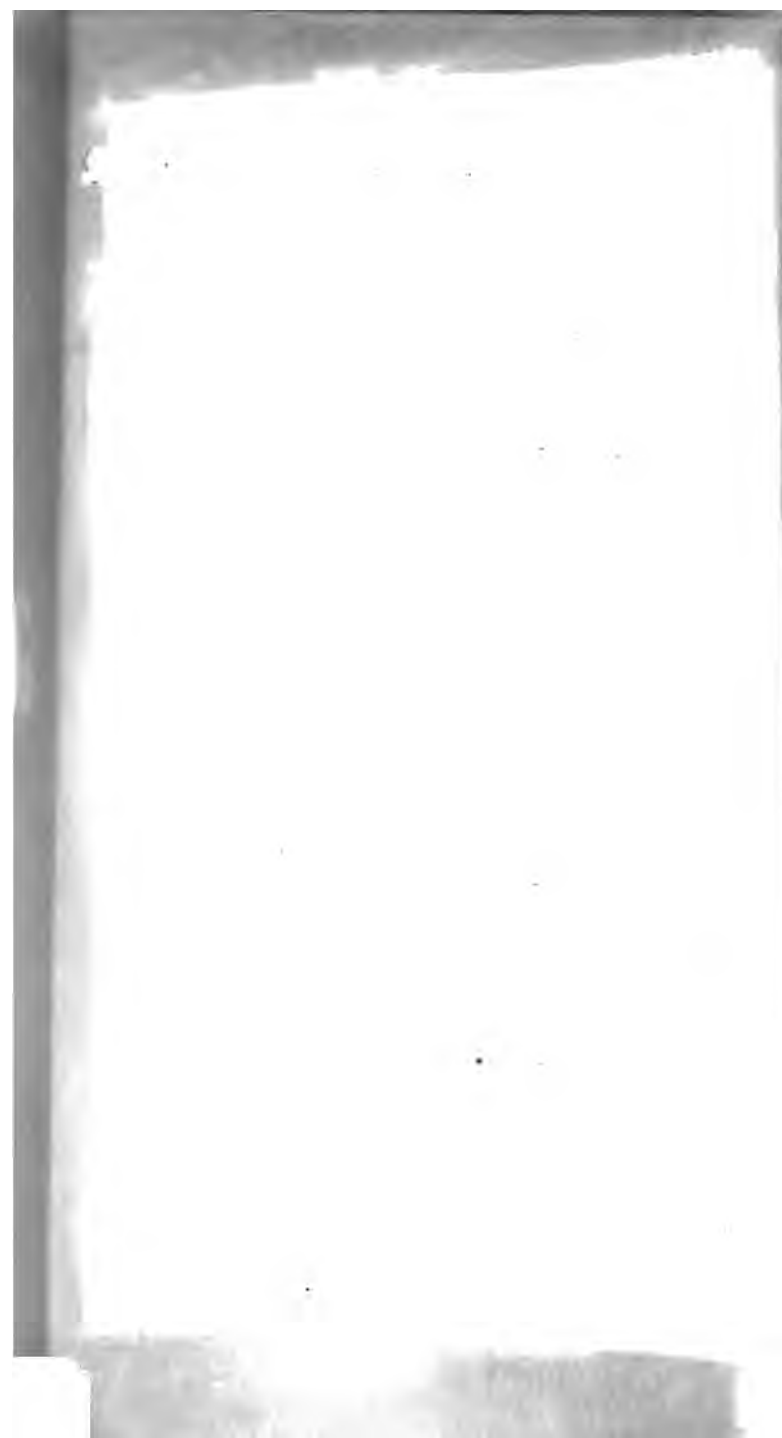






1

2







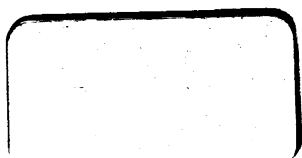


UC-NRLF



B 3 471 126





IRVING STONE
NÁMOŘNÍK NA KONI



Jack London

**IRVING
STONE
NÁMOŘNÍK
NA KONI**

**SMENA
MLADÁ FRONTA
NAŠE VOJSKO
1963**

69658110

DAN STACH
~~1116~~
GIFT

PS 3523
L046 Z9168

POTLAČÍŠ-LI PRAVDU, UTAJÍŠ-LI PRAVDU,
NEPOVSTANEŠ-LI NA SCHŮZI A NEPROMLU-
VÍŠ-LI OTEVŘENĚ, PROMLUVÍŠ-LI NA SCHŮZI
OTEVŘENĚ A NEPOVÍŠ-LI PRAVDU, PAK
NEJSI TAK PRAVDIVÝ JAKO PRAVDA.

DEJ MI ZAHLÉDNOUT TVÁŘ PRAVDY.
POVĚZ MI, JAK VYPADÁ TVÁŘ PRAVDY.

Jack London



Jednoho dne na počátku června roku 1875 se lidé v San Francisku hned zrána dověděli z novin o děsné události. Jakási žena se střelila do spánku, protože „ji manžel vyhnal z domu za to, že nechtěla zahubit své nenarozené dítě — příklad bezcitnosti a žalostných rodinných poměrů“. Ta žena byla Flora Wellmanová, černá ovce pionýrské rodiny Wellmanů z Massillonu ve státě Ohio, manžel byl profesor W. H. Chaney, potulný astrolog irského původu — a nenarozené dítě se mělo proslavit mezi milióny po celém světě jako Jack London.

Zpráva v sanfranciském listě CHRONICLE podle doznání na poslední řádce byla vlastní Flořina výpověď, která pronikla na veřejnost zásluhou jejích přátel, ale přesto znamenala přímé osočení Chaneyho. Oznamovala také, že Chaney byl vsazen do vězení Tombs, a obviňovala ho, že už kolik svých dřívějších manželek poslal „na krchov — v hlavách zelený drn, v nohách kámen“; že Floru přinutil, aby dřela u necek a za plat opatrovala cizí děti; že prodal nábytek, který pomohla zaplatit; že ji vykázal z domu, a když nechtěla jít, že ji opustil. Na těchto obviněních je právě tak málo pravdy jako v titulku zprávy v CHRONICLE „Zavržená manželka“ — Flora Wellmanová totiž nebyla za profesora Chaneyho provdána.

Nejspíš neměla ani v úmyslu spáchat sebevraždu. Způsobila si jen tělesné zranění. Vystřelený náboj daleko víc ublížil Chaneymu než Floře, protože zprávu z CHRONICLE pak otiskly noviny po celých Spojených státech a Chaney strávil zbytek svého života zatrpklý a zhanobený. Brzy potom ze San Franciska zmizel. Jack London svého otce jakživ nespátřil.

Když zprávu uveřejnili v CHRONICLE, bylo Floře Wellmanové asi třicet. Byla drobná, nehezka, hubená ale svalnatá, nosila brýle a černou kučeravou paruku, protože ji tyfus připravil téměř o všechny vlasy a velmi jí poškodil zrak. Měla velký nos, velké uši, špinavě zažloutlou pleť a nedovedla se vkusně oblékat. Pocházela ze zdravého waleského rodu, její babička Joel Wellmanová v zimě hned na počátku devatenáctého století převedla své čtyři děti přes Alleghenské

hory z Canandaigua ve státě New York do obvodu Wayne v Ohiu — a takový pochod vyžadoval energii, houževnatost a odvalu.

Tyto vlastnosti zdědili oba synové paní Joel Wellmanové, Hiram a Marshall, děd Jacka Londona. Když byli jednou na výletě v Clevelandu, vypravili se pozdě na podzim lodí na jeden ostrov v zálivu jezera Erie. Na zpáteční a své poslední plavbě toho roku loď u ostrova nepřistála: hoši zůstali sami, bez jídla a bez přístřeší na opuštěném ostrově a zima byla za dveřmi. Nástroji, jaké si mohli vyrobit z kamení a naplaveného dříví, sestrojili si vor sdostatek silný, že je dopravil na pevninu a dokonce až do Clevelandu.

Marshall Wellman se usadil v Massillonu ve státě Ohio, kde zbudoval průplavy, dal si patentovat vynálezy, například známý Wellmanův uhelný rošt, nahromadil značné jmění, postavil jeden z nejkrásnějších obytných domů v městě a tam se narodila jeho dcera Flora.

Měla všechny přednosti, jaké v tehdejší době mohla získat. Dostalo se jí vzdělání ve vyšší dívčí škole, i hudebního, byla sečtělá, mluvila dobrou angličtinou a měla uhlazené způsoby. Jako dívka z bohaté rodiny mohla si vybrat manžela a žít v blahobytu a spořádaně jako její bratři a sestry. Ale v té mašinérii to někde neklapalo — Marshall byl sice chytrý a vynalézavý, ale pokud šlo o vlastní dceru, neměl tolik důvtipu, aby ji udržel na uzdě. Podle tvrzení jejích přátel byla chytrá a inteligentní, ale nervózní a vznětlivá — jen stěží se dovedla podřídit vnucené kázni a vedení. Ve dvaceti letech onemocněla tyfem a po nemoci se prý u ní začala projevovat duševní porucha.

V pětadvaceti letech si Flora sbalila věci do kufru a odjela z Massillonu — bylo úplně neslýchané, aby mladá svobodná dívka něco takového udělala. Až do konce života nikdy rodičům nenapsala, ani rodiče nepsali jí. Bezesporu došlo k nějaké hádce, ale co ji vlastně zavinilo, o tom byly jen dohady. Vynalézavý reportér v CHRONICLE upozorňoval, že „přibyla na naše pobřeží právě v době, kdy se profesor Chaney vydal na cestu napříč pevninou přes romantické prerie“, ale Flora se s ním seznámila až za tři roky v Seattlu. Stálo by za to vysledovat její stopu během těch tří záhadných let, kdy cestovala od města k městu a živila se vyučováním hře na klavír — podle různých svědectví se dá usuzovat, že by to asi nebyla pěkná historie.

Profesor Chaney píše: „Flora byla známa jako má manžel-

ka v téže ubytovně, kde předtím bydlela jako žena Leca Smithe. Ubytovna se považovala za velmi slušný dům, a když jsem jednoho dne přišel domů, byl v celém domě velký rozruch a dověděl jsem se, že se všichni obyvatelé stěhují pryč. Jakmile jsem vešel do našeho pokoje, padla Flora přede mnou na kolena a s hlasitým pláčem mě prosila, abych jí odpustil. Řekl jsem, že nemám co odpouštět. Nakonec po velkém otálení a orodování se mi přiznala, jak to bylo s Leem Smithem a že se nájemníci stěhují proto, že se téměř současně vydávala za slečnu Wellmanovou, paní Smithovou a paní Chaneyovou. Měl jsem se tehdy řídit svým prvním popudem a ihned ji opustit, mohl jsem si ušetřit kolik let utrpení. Ale i já jsem už tehdy měl život zničený, a tak jsem jí po úvaze odpustil.“

Chaney se s Florou Wellmanovou seznámil u seattleského starosty Yeslera, který pocházel z Ohia a odtamtud se znal s rodinou Wellmanových. Flora byla na návštěvě u manželů Yeslerových a od nich se Chaney dověděl, že je z velmi slušné rodiny, ale že se dopustila něčeho zlého, neznámého, a to byla pravděpodobně příčina jejího útěku z domova. Chaney se s Yeslerovými důvěrně přátelil, často k nim chodil, a když se s Florou později setkali v San Francisku, byli už dávní známí.

Jaký vlastně byl otec Jacka Londona? Z jeho dřívější minulosti je známo jen velmi málo: že byl čistokrevný Ir, že se narodil ve srubu ve státě Maine a v mládí mnoho let pobýval na moři. Měl malou statnou postavu a v šedesáti letech dovedl shodit se schodů surovce, kterého k němu poslali, aby ho zmlátil. Celý život psal, redigoval časopisy, přednášel, učil a sestavoval horoskopy. Nashromáždil si obsáhlou knihovnu filosofických, matematických, astronomických a okultních spisů. Znal mnoho jazyků a prostudoval dějiny a bibli. Mezi svými přáteli, žáky a stoupenci byl znám jako pozoruhodný člověk a mezi astrology jako jeden z nejlepších znalců jejich oboru. V stáří prý se v Chicagu s veškerou energií věnoval až šestnáct hodin denně astrologii, v kterou vášnivě a upřímně věřil. Považoval ji za vědu přesnou, jako je chemie a matematika, a byl přesvědčen, že to je věda, která lidstvo povznese z bahna.

Jeho největší slabostí byly ženy. Když mu to přátelé vytýkali jako nemrav, poukazoval na svůj horoskop a namítal: „Vždyť to mám bohužel v planetě!“ Snadno se nechal vydráždit k zlosti, těžko se s ním vycházelo, protože

vždycky musel mít vrch, musel vést a poučovat. Téměř celý život žil v chudobě, protože byl v peněžních věcech nepraktický; když měl chudé žáky, kteří nemohli platit, učil je zadarmo a ustavičně rozdával i z toho mála, co měl.

Chaneyho žáci dosvědčují, že svými přednáškami pokaždé upoutal pozornost, protože vždycky měl co říci a říkal to zábavně. A přitom se mu málokdo vyrovnal sarkasmem a ironií. Přátelům, kteří dovedli myslet, skýtal hodně látky k přemýšlení, a pokud to nedovedli, nezůstali dlouho jeho přáteli. V Portlandu ve státě Oregon byly jeho týdenní přednášky velmi oblíbené. Chaney stál před černou tabulí s nakresleným horoskopem zvící dvou stop, ukazovátkem upozorňoval na různé konfigurace planet a vyvolával posluchače, aby vysvětlili jejich význam. Po přednášce, která trvala půldruhé hodiny, častoval je zábavnými anekdotami, kořeněnými irským humorem.

Jeden z jeho stoupenců, Joe Trounson z Healdsburgu, později soudruh-socialista Jacka Londona, v roce 1909 napsal: „Jedním z rysů, jimiž si Chaney v rozhovoru člověka získal, byl jeho zvyk prohlašovat: „Vida, tohle mi vnuká nápad!“ — a pak začal rozvádět nějakou krásnou pravdu nebo to, co se zdálo jako přírodní fakt, jehož si doposud nikdo nepovšiml. Matematiku a astrologii vykládal báječně a naučil mě metodě, jíž lze rozluštit dávnověké písemné znaky. Byl výtečný znalec gramatiky, důkladný a učený, měl skvělou paměť a mohl bez únavy psát šestnáct hodin denně. Často ve svých přednáškách hlásal totéž, co v současné, dnešní době hlásají socialisté: že boháči neustále bohatnou a chudí neustále chudnou, vysvětloval příčiny chudoby a jak se chudoba dá odstranit. Získal jsem od něho víc než od všech ostatních učitelů dohromady. Byl také velmi pohotový. Jednou mi řekl: „Já vás naučím, jak se vypočítá zatmění, a vůbec každé vědě, kterou si přejete poznat.“ Zkrátka kdykoli jsem se chtěl o něčem poučit, vždycky jsem se uchýlil k profesorovi Chaneymu.“

Trounson nepomíjí Chaneyho nedostatky. Pokud šlo o hudbu, byl úplný ignorant; nenáviděl bojovnice za ženské volební právo; stejně jako opravdový přítel byl i neúprosný nepřítel; když se s někým rozhádal, nenechal na něm ani chlup dobrý; bral peníze od volnomyšlenkářů, aby přednášel proti pravověrným a mladé vdovy neuměl nechat na pokoji.

Když si založil domácnost s Florou Wellmanovou, zařídili



Otec Jacka Londona



Matka Jacka Londona

Jack London v deseti letech



Jack London v osmi letech





Jack London jako mladý námořník



Jack London v r. 1903

Jack London v době, kdy psal povídky o trampování Severní Amerikou

Jack London tramp



se v domě na tehdejší První avenui mezi ulicemi Valencijskou a Misijní. Stal se členem redakce časopisu *COMMON SENSE* (který se prohlašoval za jediný volnomyšlenkářský list na západ od Skalistých hor), psal do něho články, ve Vzdělávacím spolku pronesl sérii přednášek a pořádal soukromé kursy studia horoskopů.

Profesor Chaney se trvale usídlil v San Francisku a hodlá se zde prakticky věnovat *astrologii*. Tomuto vědnímu oboru hodlá vyučovat každého, kdo si přeje nabýt vědomostí o umění číst ve hvězdách, mezi jehož učedníky a ctitele počítáme tak velké duchy, jako byli Galilei a Sir Isaac Newton. — V dlouhém seznamu těch, kdo u nás v městě inzerují v rubrice Astrologové, není ani jeden, který se v té vědě aspoň trochu vyzná. Ti, kdo si říkájí astrologové, nejsou nic víc než šarlatáni — předpovídají budoucnost podle usazeniny v čajovém šálku nebo z karet, a tím se hodně zasloužili o zdiskreditování skutečné astrologie. — Úřední hodiny dopoledne od 10 do 12 a odpoledne od 2 do 4. Večerní návštěvy si lze zajistit předběžným ujednáním.

Chaney nebyl šarlatán. Na lehkověrných nevydíral zúmyslně peníze: o tom svědčí skutečnost, že se téměř celý život bezplatně věnoval učení, psaní a přednášení o astrologii. Několik historek snad osvětlí, jakou autoritu si dovedl v tom oboru získat.

„Jednou požár zničil dům. Zřejmě byl založen záměrně. Majitel domu se poradil s profesorem Chaneyem. Chaney mu řekl, že žháří jsou tři muži, které velmi přesně popsal, a když majitel domu k nim přišel a oznámil jim, že je Chaney označil jako pachatele, ihned se přiznali. Jestliže to řekl Chaney, bylo by úplně marné zapírat.“

„Jedna starší žena, která asi nevedla přísně mravopochestný život, přišla k Chaneymu, aby jí vyložil její horoskop. Uprostřed výkladu vyskočila ze židle, vykřikla: Ten člověk dovede uhodnout, co si myslí sám Pánbůh! a utekla.“

V neděli večer mívál Chaney přednášky o astrologii v sále Charter Oak a Flora prodávala u vchodu vstupenky po deseti centech. Nějakou dobu měl na přednáškách pěknou návštěvu, jenže část obecnstva se zřejmě přišla jen vysmívat a pobavit.

Nejlepší doklady o Chaneyho smýšlení a práci se dochovaly v jeho člancích, které vyšly v časopise *COMMON SENSE*: „Příčiny a odstranění chudoby“ a „Jak naložit se zločinci“ — tedy o věcech, o nichž po dvaceti letech psal s takovým

zápalem jeho syn Jack. V článku „Člověk by měl umět předpovídat budoucnost“ Chaney píše: „Nesprávnou výchovou jsme byli vedeni k víře, že o budoucnosti rozhoduje Bůh a že je rouháním, když se člověk jen pokouší něco z ní vyslídit. Snad devět desetin obyvatelů Spojených států bylo od nejranějšího dětství vychovááno v této víře, a tak mají sklon pochybovat, že budoucnost lze předpovědět. Zastávají podobné názory jako lidé z dob před Galileim. Těm byla vštěpována poučka, že naše země je plochá, hrozili se každého, kdo tvrdil, že země je kulatá, a když papež a kardinálové Galileiho uvěznil, poněvadž učil, že se země pohybuje na okružní dráze, byli prostí lidé přesvědčeni, že Galilei, jeden z prvních mučedníků za vědeckou pravdu, byl ztrestán právem.“

Studium Chaneyho článků nám odhalí jasný, jadrný a pěkný literární styl, opravdové vzdělání, odvalu projevit vlastní názory, citění s převážnou většinou lidstva a přání poučit je, že by se jim mohlo dařit líp. Jeho smýšlení je moderní, pokrokové; v článku o kriminologii píše, že na zločince má zastrašující účinek ani ne tak přísnost jako jistota trestu, a v jiném článku doporučuje, aby Vzdělávací spolky pořádaly každý týden schůze nejen pro muže, ale i pro ženy a děti, na nichž by dospělí diskutovali o přednesených tezích a děti by se cvičili v hudbě, slohových úkolech a kritice, tak aby později mohli dále vzdělávat lidstvo, a jistě by pak po několika generacích neřest a zločin téměř vymizely.

V mnohém ohledu se Chaneyho psaní, útočení, nazírání, nadšení a dokonce i větná stavba tolik podobá psaní Jacka Londona, že čtenář nevychází z úžasu.

Flora se zajímala nejen o astrologii, ale ještě horlivěji o spiritismus. Pořádala seance, na nichž obecnost vyzývala, aby obcovalo s mrtvými, aby posílalo vzkazy milovaným zesnulým a vzhledem k jejich výsadnímu postavení aby se s nimi radilo, jak si počínat v obchodním podnikání i v milostných záležitostech, jak vyřizovat spory a získávat vládu nad manžely nebo manželkami. V sedmdesátých letech minulého století byl spiritismus velmi v módě, v San Francisku se pořádaly desítky seancí a pravověrní spiritisté se dokonce s duchy radili, i tehdy když chtěli přijmout třeba jen hospodyně do domácnosti.

Flora a Chaney spolu v San Francisku prožili řadu šťastných měsíců — Flora vedla domácnost, dávala hodiny

na klavír, pořádala seance, přednášela o spiritismu a při Chaneyho přednáškách o chemii, astrologii a okultismu kontrolovala vstupenky u vchodu do stanu s podlahou vystlanou drtinami. Měli přátele mezi astrology, v jejichž kruzích požívali vážnost a zaujíмали vůdčí postavení. Zdá se, že Flora Chaneyho opravdově milovala a toužila provdat se za něho, ale Chaney byl ve Vzdělávacím spolku tolik zaměstnán přednáškami o „Životních jevech fyzického, intelektuálního, mravního a duchovního řádu“, že se nemohl obtěžovat něčím tak světským, jako je manželství.

Když bylo Jacku Londonovi třiaadvacet let, obrátil se na Chaneyho písemně s dotazem, zda je jeho otec. 4. června 1899, přesně na den čtyřiaadvacet let po uveřejnění zmíněné zprávy v CHRONICLE, Chaney odpovídá Jackovi na dotaz, oslovuje ho v dopise „Milý pane“, vyjadřuje souhlas s jeho „přáním zachovávat v této věci diskrétní mlčení“ a líčí ve vlastním podání události, které vedly k Flořině pokusu o sebevraždu. „S Florou Wellmanovou jsem se vůbec neoženil,“ píše Chaney, „ale žila se mnou od 11. června 1874 do 3. června 1875. Už tehdy jsem byl impotentní — byl to následek mých životních útrap, bídy a přflišné duševní námahy. Proto nemohu být vaším otcem a nejsem si ani jist, kdo jím je.“

Chce vyhovět Jackovi, který ho žádá, aby mu pomohl zjistit, kdo tedy je jeho otec, a tak ho informuje o pověstech, podle nichž se Flora na jaře roku 1875 stýkala s dvěma jinými muži, ale hned se přiznává, že „z přímého poznání sám o tom neví nic“. A pak následuje dojemně důvěrné sdělení: „Byla doba, kdy jsem Floru měl opravdu rád, ale jindy jsem ji střídavě zas nenáviděl s celou prudkostí své prudké povahy, dokonce jsem měl v úmyslu zabít ji i sebe, jak na to za podobných okolností pomýšlel ne jeden muž. Jenže časem se mé rány zhojily a nechovám k ní nevlídné pocity, a vůči Vám cítím vřelou sympatii, protože si dovedu představit, jak by bylo mně na Vašem místě... V CHRONICLE tehdy stálo, že jsem Floru vyhnal z domu, protože nechtěla přivolit k potratu. Tohle pak otiskly a rozhlásily noviny v celých Státech. Četly to i mé sestry v Maine a dvě z nich se od té doby ke mně chovají nepřátelsky. Jedna až do smrti setrvala v přesvědčení, že jsem Floře ublížil. Všichni mí ostatní přfbuzní, kromě sestry v Portlandu ve státě Oregon, dosud o mně smýšlejí nepřátelsky a prohlašují, že jsem je

zostudil. Vydal jsem tehdy leták se zprávou detektiva, kterou jsem dostal od náčelníka policie, a z ní vyplývalo, že mnohé z těch pomluv o mně jsou nepravdivé, ale ani *CHRONICLE*, ani žádné jiné noviny, které mě tak zhanobily, neuveřejnily opravu svého lživého tvrzení. Pak jsem se už přestal hájit a kolik let mi život byl břemenem. Ale nakonec se všechno obrátilo k dobrému a mám teď několik přátel, kteří mě považují za slušného člověka. Je mi už šestasedmdesát a jsem úplný chudás.“

Neuspokojený Jack mu poslal novou naléhavou žádost o informace. Chaney znovu popřel své otcovství a napsal Jackovi ještě jeden, poslední dopis:

„Příčinu našeho rozchodu zavdala Flora tím, že mi jednoho dne řekla: ‚Víš přece, že mateřství je má velká životní touha, ale ty jsi starý, a tak mi dovoľ, abych měla dítě s někým jiným, najdu-li nějakého hodného a milého muže.‘

Řekl jsem jí, že jí to dovolím, ale že ji pak ten muž musí živit. Ne, bude prý žít se mnou dál, chce být ženou profesora Chaneyho. Asi tak za měsíc mi oznámila, že se mnou otěhotněla. Myslel jsem, že mě jen zkouší, nemohl jsem uvěřit, že je v jiném stavu. Proto jsem udělal velký rámus v domnění, že ji zastraším, aby se o něco podobného víckrát nepokoušela. Vyvolalo to hádku, která trvala celý den a celou noc. Jakmile se rozednilo, vstal jsem a řekl jsem jí, že s ní už nemohu žít jako s manželkou. Okamžitě zkrotla — věděla, že to míním doopravdy. Pokorně ke mně přilezla na kolenu a s pláčem mě odprošovala. Ale neodpustil jsem jí, neboť jsem se stále domníval, že své těhotenství jen předstírá. Při její zlostné povaze jsem s ní zle zkoušel a už předtím jsem si často myslel, že ji jednou budu muset opustit.

Odešla ode mne k doktorovi Ruttleymu, vyšla z domu dozadu na dvorek, za chvíli se vrátila v jedné ruce s revolverem a v druhé s krabicí nábojů, s ránou vlevo na čele a s obličejem zbrceným krví. Na otázku paní Ruttleymové Flora odpověděla: ‚Ženuška se zkoušela zabít a nepovedlo se jí to.‘

Vyvolalo to ohromný rozruch. Sběhl se dav, asi tak sto padesát lidí, a začali láteřit, že mě pověsí na nejbližší lůčerně.“

Ačkoli zmizely všechny výtisky letáku s obhajobou, jež Chaney vydal, potvrzují jeho existenci lidé, kteří jej tehdy četli. V detektivově zprávě stojí, že revolver byl už starší

a že z něho nebylo vystřeleno od té doby, co byl naolejován; že páchl olejem, a nikoli střelným prachem; že tesař, který pracoval ani ne deset kroků od Flory, vůbec neslyšel ránu z revolveru; že kdyby se postřelila, jak sama tvrdí, musela by mít celý obličej začouzený, ale že na něm neměla ani stopu po střelném prachu.

Zvláštní je, že se Chaney sice snažil dokázat Flořin podvod, ale nepokoušel se prohlédnout si její zranění, aby se přesvědčil, zda je skutečné nebo jen předstírané, ani se o tom nezmínil v letáku na svou obhajobu. Věděl dobře proč: že Flora byla zraněna do spánku, to potvrzuje svědectví její nevlastní dcery Elizy Londonové Shepardové i nevlastního vnuka Johna Millera. Chaney se zřejmě snažil dokázat, že pokud se Flora vůbec zranila, stalo se to něčím daleko méně nebezpečným, než je revolver — například ostrým vroubkovaným kovovým plískem — ale i kdyby se mu tohle bylo podařilo, beztak by mu to nebylo nijak prospělo.

Podobným nedopatřením si Chaney zavinil, že neobstojí ani důvod, jímž popřel své otcovství. Jestliže chtěl vyvrátit Flořino tvrzení, že s ním otěhotněla, a opravdu byl impotentní, bylo by přece stačilo, aby jí řekl: „Floro, vždyt my dva spolu sexuálně vůbec nežijeme, jak tedy mohu být otcem tvého dítěte?“ A jestliže byl skutečně impotentní, nemohla přece být Flora tak hloupá a tvrdit, že s ním otěhotněla! Přes veškeré své vzdělání si Chaney zřejmě popletl termín: chtěl Jackovi sdělit, že je sterilní a nemůže zplodit život — vždyt vůbec nezapírá, že s Florou žil jako s manželkou.

Proč vlastně Chaney popíral, že je otcem Jacka Londona? Jak se zdá, mnil to upřímně, a proto můžeme věřit, že se opravdu pokládal za neplodného a byl přesvědčen, že v kritickém měsíci Flora žila s jiným mužem. Ale i kdyby o tom nebyl zcela přesvědčen, jistě se mu nechťelo po sedmdesátce, na sklonku života, hlásit se k synovi. Spoluzití s Florou Wellmanovou bylo mu velkým soužením, a tak ho ani nenapadlo znovu se vrhat do něčeho, co mu dlouhá leta ztrpčovalo život. Jack London byl pro něho cizí člověk, jehož jméno ani neznal. Pokud šlo o Floru a Jacka Londona, chtěl Chaney zkrátka mít od nich pokoj.

Ale marně své otcovství popíral. Jméno Jack London, psané jeho rukou na obálkách dopisů zaslaných Jackovi, je k nerozeznání od Jackova vlastního podpisu. Jack po svém

otci zdědil energický, hezký irský obličej, světlé vlasy, vysoké čelo, hluboko vsazené mystické oči, smyslná ústa, silnou bradu a krátké zavalité tělo. Doktor Hall, který pečoval o Floru v době jejího těhotenství, dosvědčuje, že o šestnáct let později viděl nastupovat na převozní loď hezkého mladistvého pořízka, který jako by byl z oka vypadl profesorů Chaneymu, takže ještě než se zeptal, jak se ten mladík jmenuje, hned věděl, že to nemůže být nikdo jiný než syn Chaneyho. Především však zdědil Jack po otci mentalitu a povahu: otec a syn si sotva kdy byli dokonaleji podobní povahovým založením a způsobem myšlení.

Po tom pokusu o sebevraždu se ujal Flory William H. Slocumb, který psal do *CHRONICLE* a vydával *COMMON SENSE*, a v jeho rodině nalezla domov až do narození Jacka. Když se Chaneymu nepodařilo se obhájit, ubytoval se u sestry v Portlandu, která jediná v něho neztratila víru. Žil u ní mnoho let, nashromáždil si pěknou knihovnu, vydával letáky a astrologický kalendář a získal si žáky a stoupence. Později se odstěhoval do New Orleansu, kde vydával okultní časopis a za stravu a byt vyučoval dva chlapce. Nakonec se přestěhoval do Chicaga, kde se konečně oženil, založil si tam vyšší astronomickou školu a jakž-takž se protloukal tím, že na počkání, jen ústně sestavoval lidem horoskopy po jednom dolaru. Skonal před koncem století a podle tvrzení jednoho žáka do puntíku splnil svou předpověď, že zemře toho a toho dne a bude mít pohřeb za prudké sněhové vánice.

Flora Wellmanová veřejně přednášela o spiritismu a činně se účastnila seancí až do dne, kdy se jí narodil syn. Lidé v San Francisku se na ni pamatují, jak stávala na pódiu příšerně ustrojená, s falešnými černými lokýnkami až na ramena, schoulená dopředu, v ramenou nahrbená, a s vystrčeným těhotným břichem. Litovali slabou neprovdanou ženu, tak osamělou na světě, a nejednou v její prospěch uspořádali sbírku.

Čtrnáctého ledna 1876 se znovu objevuje v *CHRONICLE* jméno Chaney, ale tentokrát je o něm vldnější zmínka: „CHANEY. — V našem městě se 12. ledna manželce W. H. Chaneyho narodil syn.“ Chlapec se jmenoval John Chaney pouze osm měsíců — potom se Flora provdala za Johna Londona.

John London se narodil v Pensylvánii, ale jeho rodina pocházela z Anglie. Chodil do venkovské školy a moc rád recitoval. V devatenácti letech byl partákem na stavbě železniční trati Pensylvánie-Erie a oženil se s Annou Janou Cavettovou. Měli spolu deset dětí a jejich manželství bylo šťastné. Pak London vystoupil ze služeb železniční společnosti a stal se farmářem. Když v Americe vypukla občanská válka, bojoval na straně Severu proti otrokářskému Jihu, dokud při onemocnění tyfem nepřišel o jednu plíci. Po válce si zabral kus půdy ze státního vlastnictví blízko Moscow ve státě Iowa, hospodařil tam jako farmář, byl místním šerifem a pracoval jako tesař a zedník. Byl také almužníkem metodistické církve a v neděli po kázání si vedl duchovního k sobě na sváteční oběd.

Zanedlouho po smrti Anny Jany Cavettové utrpěl jeden jejich syn úraz — baseballový míč ho udeřil do prsou. Lékař doporučoval, aby ho odvezli do Kalifornie, že se v tamějším podnebí dříve uzdraví. Jenže je zapomněl upozornit, že se Kalifornie táhne od jihu na sever tisíc dvě stě mil, a má tedy rozličná podnebí. John London věděl jen o jednom městě v Kalifornii, a to bylo San Francisco — posadil tedy nemocného synka a dvě své mladší dcerky do vlaku, který jel na západ, a v San Francisku po deseti dnech mlhavého počasí chlapec zemřel.

London ihned napsal jedněm manželům ve státě Iowa, aby mu přijeli do Kalifornie vést domácnost a starat se o dvě dcerky. Ale ti po několika měsících odjeli do severní Kalifornie, kde muž dostal zaměstnání. Když London se svými dvěma děvčátky znovu osaměl, dal je na výchovu do Protestantského sirotčince v High Street, kde za ně musel platit.

Tehdy mu bylo už přes čtyřicet — zjev měl líbivý, nosil bradku a licousy a kdekdo na něho vzpomíná jako na přívětivého a vlídného člověka. Protože stále truchlil nad ztrátou ženy a syna, přemluvil ho jeden dělník, s nímž pracoval, aby se zúčastnil schůze spiritistů. „Pojď se mnou, John, kdoví jestli od nich nedostaneš nějaký vzkaz.“ Ale místo aby John dostal vzkaz od nebožky, setkal se tam se svou příští ženou.

Není známo, zda se London s Florou seznámil před narozením jejího děcka nebo až později, ale bezpochyby věděl, že Flora nebyla za Chaneyho provdána. Sama se k tomu přiznala na veřejné schůzi v sále Charter Oak, kde Chaneyho

přísně odsoudila — jenže on tehdy už nebyl v San Francisku. Snad každému bylo divné, proč se London oženil s Florou. Nekypěl zrovna zdravím, ale byl pěkně urostlý, vypadal mile a líbil se ženám, obzvláště jedné půvabné herečce, která s ním každou sobotu odpoledne chodila do sirotčince navštívit jeho dcerušky.

John London žil v San Francisku osaměle a přitom byl domácký — toužil po manželce a rodinném krbu, po domově a matce pro své dcerky. Flora byla příjemná společnice, výrečná, hrála mu na klavír a necítil se s ní tak osamocенý. Když znovu dostal tyfus, Flora ho ošetřovala. Za dva týdny poté, co musel ulehnout, ukázala se v sobotu odpoledne v návštěvních hodinách v sirotčinci, řekla děvčátkům, že jejich otec je nemocný, a oznámila jim, že ona teď bude jejich nová maminka. Děvčátka jí to nechtěla věřit.

Sedmého září 1876 se Flora Wellmanová na oddací list podepsala jako Flora Chaneyová a s osmiměsíčním synáčkem se přistěhovala k Johnu Londonovi do malého bytu v dělnické čtvrti na jih od Tržní ulice. Jakmile se zařídili, došel si John pro své dvě dcerky do sirotčince a vzal si je domů. Starší Eliza byla osmiletá, nehezká a prostořeká, na svůj věk vypělá a samostatná. Otec ji provedl po domácnosti a řekl jí, že to dětátko je její bratříček. Sotva Jacka prvně uviděla, hned si všimla, že mu po obličejku lezou mouchy, poněvadž Floře nenapadlo, aby pro dětátko koupila sítku proti komárům. Eliza bez řečí udělala z papíru vějíř, posadila se u dětské postýlky a odháněla mouchy od dětátka. Hned v první chvíli se praktická osmiletá holčička Jacka ujala jako vlastního dítěte a tu opatrovnickou povinnost věrně plnila až do dne, kdy Jackův popel pohřbila na kopci nad Měsíčním údolím.

Floře se úloha matky moc nezamlouvala. Byla neklidná, vznětlivá, náladová a tolik se věnovala hudbě, přednáškám a spiritismu, že o chlapečka neměla kdy pečovat, až dostal střevní katar. Na radu rodinného lékaře se Londonovi odstěhovali za město na Bernal Heights — byla to zemědělská oblast a Flora se tam sháněla po kojné. Přihlásila se jí paní Jenny Prentissová, černoška, která bydlila jen přes silnici a právě přišla o své dětátko — ta se stala Jackovou kojnou, pěstounkou a doživotní přítelkyní. Teta Jenny měla vysokou statnou postavu a těžké prsy, byla černá jako uhl, pracovitá a hrdá na svůj domov, na svůj rod a na to, že si jí v obci všichni váží. Brala si Jacka na rozložitý klín, zpívala

mu černošské ukolébavky a štědře ho zahrnovala prudkou láskou, již by byla nešetřila pro své vlastní dítě, kdyby zůstalo naživu. O Jacka tedy pečovala Eliza i teta Jenny a bylo o něho dobře postaráno.

Po roce se Londonovi odstěhovali zpátky do města, do čísla 920 v Natoma Street v přelidněné dělnické čtvrti. To se Jack už batolil a tahal za sebou červený vozíček, do něhož si Eliza ukládala panenku, a Jack ji vozil sem tam po chodníku. Když Eliza jednou přišla domů ze školy, panenka byla rozbitá, protože Flora ji půjčila Jackovi, ale zapomněla ji ve vozíčku přivázat.

Londonovi bydleli v dvoupatrovém dřevěném stavení dva roky ve služebním bytě od železniční společnosti. Flora si vzala podnájemníka a z toho, co od něho dostávala, platila si čínskému sluhu. John London pracoval jako tesař a zedník, ale práce bylo málo, protože hospodářská krize z roku 1876 na Západě ještě nepolevila. Na čas dostal zaměstnání při vybavování zboží pro chystaný veletrh a pak si vydělával na živobytí jako agent u firmy Singrovy šicí stroje.

Když San Francisco zasáhla epidemie záškrtu, onemocněli Jack i Eliza. Leželi spolu na jedné posteli, odděleně od ostatních dětí, a oba byli na umření. Jednou se Eliza aspoň na chvíli probírala z mrákot, takže slyšela, jak se Flora ptá lékaře: „Pane doktore, můžeme je oba pohřbít v jedné rakvi? Bylo by to lacinější.“ Zatímco vlastní matka už málem chystala Jackovi pohřeb, jeho nevlastní otec po celém městě sháněl odbornou ošetřovatelku a lékaře, aby děti zachránil. Dověděl se o jednom, který měl pozoruhodné úspěchy v léčení záškrtu, ale bydlil v Oaklandu, na druhé straně zálivu. John London se k němu vypravil nejbližší lodí a úpěnlivě ho prosil, aby s ním jel do San Franciska. Lékář přišel, vypálil dětem bílé hnisavé vřidky v krku, potom jim vypláchl krček sítrovou emulzí — a tak dvojitý pohřeb odvrátil.

Sotva se Jack s Elizou úplně uzdravili, Londonovi se odstěhovali do Oaklandu, prosluněného ospalého předměstí San Franciska, které se už snažilo vyrůst na samostatné velkoměsto. Pronajali si v Třetí ulici pohodlný domek o pěti pokojích. Flora celé dny sháněla někde venku možnosti, jak rychle zbohatnout a přispět k občasným výdělkům Johna Londona. Hlavní její spekulací byl prodej tenkého zlatého plíšku, který nabízela hospodským na pozlacení rámu kolem obrázků ve výčepu. Když hospodský

nechtěl uvěřit, že rámy obrázků budou hezčí pozlacené, vylezla si Flora na nálevní pult a sama je pobila zlatým plíškem.

O něco později se za Londonovými do Oaklandu přistěhovala teta Jenny, aby svému „bílému děčku“ byla blíž, ale zatím veškerá mateřská péče o Jacka těžce dolehla na Elizou. Buď musela s bratříčkem zůstat doma, nebo si ho brala s sebou do školy. Když učitelce vysvětlila, proč s sebou musí vodit bratříčka, postavila mu učitelka na stupínek bednu místo stolečku a dala mu obrázkové knížky, aby si je prohlížel. Jack byl tehdy čtyřletý a rád si na dvoře hrál s dětmi, které dávaly Elize jablíčka nebo jí půjčovaly prstýnky, aby s nimi Jacka nechala.

Pak si podnikavý John London otevřel kupecký krám v oaklandské dělnické čtvrti na rohu Sedmé ulice. Rodina bydlila ve čtyřpokojovém bytě za krámem. Tam už Jack zřejmě vytušil, že to mezi rodiči neklape, protože v rukopisných načmáraných poznámkách k vlastnímu životopisu, který s titulem „Námořník na koni“ hodlal jednou napsat, je vyprávění, jak šestiletý chlapec vzadu za kupeckým krámem vyslechne hádku, při níž otec jeho matce vyčítá, že má nemanželské dítě, a matka se s hlasitým pláčem hájí: „Vždyť jsem byla tak mladá a on mi sliboval modré z nebe!“

Kupecký krám prosperoval. John London, znamenitý znalec plodin, jezdil po vzdálených farmách nakupovat nejlepší ovoce a zeleninu, Flora s Elizou obsluhovaly zákazníky a Jack běhal po krámně a každou chvíli si vzal nějaké cukrátko nebo ořech. Teta Jenny se ubytovala v domku v Alamedě, kde si Jack denně kolik hodin hrál s jejími dětmi, jedl u jejího stolu a ta hodná žena ho hlídala, pečovala a starala se o něho jako o vlastního synáčka. Jackovi se od ní dostávalo rad i útěchy; když ho omrzelo hrát si vzadu na dvorku s ostatními dětmi, vylezl jí na klín a teta Jenny mu zpívala ukolébavky nebo vyprávěla pohádky, které znala z vlastního dětství a zdědila po předcích.

Londonovi v té době patrně byli spolu šťastni. Jen Flora byla nespokojená, zdálo se jí, že se dost rychle nevzmáhají. Seznámila Johna s jakýmsi Stowellem a přemluvila ho, aby tomu člověku prodal poloviční podíl na jejich krámně, že jej pak budou moci rozšířit a rychleji vydělají peníze. Londonovi a Stowellovi si společně pronajali velký moderní dům na rohu ulic Šestnácté a Woodsovy v zámožné obytné čtvrti. Krám skutečně rozšířili a obchod vzrostl natolik, že

John London musel neustále jezdit po venkově a nakupovat zboží. Stowell měl na starost prodej v krámě a tržbu. London už ani nevěděl, co se v krámě děje. Jednou po návratu z nákupní cesty našel krám prázdný: Stowell prodal všechno zboží ze skladu i zařízení krámu a s penězi zmizel.

John London se znovu octl na mizině a vrátil se k farmarění, své jediné lásce. Najal si v Alamedě farmu Davenport v rozloze dvaceti akrů a pěstoval tam kukuřici a jiné polní plodiny, a ty pak prodával. Jack píše, že to bylo neutěšené období jeho dětství, poněvadž si tam neměl s kým hrát a musel si postačit sám.

London dovedl hospodařit a mohl mít v podnikání úspěch, jenže Flora nebyla z těch, kdo si dají pokoj. Nikdo v rodině Floře neupíral, že má dobrou hlavu, a tak jí manžel ponechal vedení peněžních záležitostí. Nikdy se nemohl dopídit, zač vlastně utratila peníze, protože účty zřejmě nechávala nezaplacené. Pyšnila se, že je chytrá, a pořád se snažila vydělat nějakým novým podnikáním: sázela peníze do loterních losů a různých akcí. Myslíla to dobře, ale byla fanfárum. Mimo to mermomocí chtěla, aby se vedení domácnosti řídilo podle pokynů, které prý dostává od duchů zemřelých. Přestože se London po svatbě už víckrát nezúčastnil žádné spiritistické schůze, zvala si Flora spiritistickou společnost domů. Při seancích položili šestiletého Jacka uprostřed tmavého pokoje na stůl, na jehož okraji spočívalo sedm párů rukou, a stůl se i s Jackem začal vznášet po pokoji.

Duchařské schůzky, strašidelné rozhovory, které Jack slychal za pultem v oaklandském krámě, jeho vznětlivá a neukáznená povaha, zděděná po Floře, to všechno asi bylo příčinou, že měl často nervové záchvaty, při nichž někdy málem omdlel.

Flora byla droboučká — sahala manželovi pod rozpaženou ruku — ale dovedla vyvolávat výstupy zcela nepřiměřené jejímu vzrůstu. A mimoto měla svízele „se srdcem“. Dostávala srdeční záchvaty třeba u stolu při jídle, a tu na svých třech dětech chtěla, aby jí pomohly na pohovku a nadělaly s ní plno cavyků. Proto vedení domácnosti připadlo Elize, která ve třinácti letech musela vařit, uklízet i prát.

Vypráví se spousta příhod z Jackova mládí, ale mnohé jsou podvržené, člověk si na ně musí dát pozor, jako by

chodil po roztržštěném skle. Ačkoli Jack občas mřval nervové záchvaty, byl patrně normální zdravé dítě, měl zlaté srdce a vůbec nebyl zlomyslný. Měl plavé kučeravé vlasy, modré oči a světlou plet. Při každé maličkosti se mu ústa citlivě rozechvěla. V Alamedě začal chodit do školy, ale jinak téměř všechen čas běhal v polích za Johnem Londonem, kterého zbožňoval.

V sobotu večer Londonovi chodili do oaklandského divadla Tivoli, kde se při představení podávaly obložené chleby a pivo. John London posazoval Jacka na stůl, aby viděl na jeviště, a hošík se smál a tleskal. Jednou si ve všední den hrál v kuchyni a Eliza tam byla s ním, drhla podlahu a dávala na něho pozor, ale Jack padl hlavou na ostrý rozbitý okraj výlevky a rozřízl si celé čelo od vlasů až k nosu. Eliza si vzpomněla, jak otec ošetřil koni řeznou ránu na noze — ucpala Jackovi ránu pavučinou a zalepila ji náplastí. První sobotu po úraze mu John hlavu zafačoval a vzal ho do divadla jako jindy, ale příští sobotu Flora prohlásila, že Jacka s obvázanou hlavou do divadla nevezme. Nařídila Elize, aby mu náplast s čela odlepila, nebo že musí s Jackem zůstat doma. Eliza i Jack chtěli do divadla, a tak mu Eliza v kuchyni strhla s čela náplast i se strupem. Jackovi potom navždy zůstala na čele jizva.

Londonovi měli krávu, sklízeli spoustu zeleniny a bydleli v pěkném domě. John dovedl půdu zužitkovat, ale jenom nejlepší plodiny prodával na trhu a méně podařené rozdával chudším rodinám v okolí. Dobył si mezi pěstiteli zeleniny pověst, že má jen prvotřídní zboží, a na davenportské farmě mohl mít zajištěné živobytí. Jenže Londonovi se z farmy zanedlouho odstěhovali do San Mateo, několik mil na jih od San Franciska. Podle tvrzení příbuzných se přestěhovali, protože potřebovali víc místa pro chov koní. Není jisto, zda se John chtěl vzdát farmaření, snad ho k tomu ponoukla vypočítavá Flora v domněnku, že chovem koní rychle zbohatnou, nebo snad zase nadělala dluhy, takže byli nuceni farmu opustit.

Svých pětasedmdesát akrů na zamlženém pobřeží John London zužítkoval k tomu, že na nich pěstoval brambory, vyháněl na pastvu pár koní a pronajímal pastviny. Jack chodil do školy na kopci — byla to jednotřídka, kde jediný učitel v jedné místnosti vyučoval žáky čtyř až pěti stupňů. Ve volných chvílích se Jack s Elizou brodili při mořském břehu a sbírali lastury a škeble. Byl to pustý, nehezky kraj

s nevlídným pobřežím. Jack tam strávil nejsmutnější rok svého dětství — neměl si s kým hrát, farmy byly daleko od sebe a v sousedství žili Italové nebo přistěhovalí Irové, o jejichž společnost Flora nestála. Jediné světlé chvíle prožíval Jack s Elizou, když se vypravili na blízkou farmu na italskou svatbu nebo k muzice nebo když si ho John London posadil k sobě na vůz, jímž vezl brambory na trh do San Franciska.

Jack na ty doby vzpomínal jako na nejhladovější ve svém životě. Býval prý tak vyhladovělý a měl tak velkou chuť na maso, že jednou ukradl spolužačce z košíčku s obědem kousíček masa, a když přejedení kluci zahazovali celé kusy masa, jen z hrdosti se přemohl, aby je nesebral z prachu a nesnědl.

Když bylo Jackovi osm let, koupil si John London za hotové ranč v Livermoru, v teplém údolí za Oaklandem, v rozloze sedmdesáti akrů, a nastěhoval se tam s rodinou do starého selského stavení. Po celém ranči nasázel olivy, založil vinice a ovocné sady a obdělával pole. Po přistěhování do Kalifornie si poprvé koupil vlastní půdu a hodlal se na ní usadit natrvalo. Jack mu pomáhal při lehčí práci, shledával snesená vejce, nosil domů dříví, čerpal vodu ze studny. Když John London jezdil se zbožím do Oaklandu na trh, často si Jacka posazoval vedle sebe na vysoký kozlík (chlapec mu říkal tatínku a miloval ho jako otce i potom, když se dověděl, že vůbec nejsou pokrevní příbuzní). John London mu vstípil nadšenou zálibu nejen pro farmaření, ale vůbec pro zemědělství podle vědeckých metod, protože jen takto se vypěstují nejlepší plodiny a nejpěknější chovný dobytek. A Jack se mylně domníval, že má lásku k tomu zaměstnání v krvi.

V Livermoru také objevil svou opravdovou životní vášeň, kterou vlastně zdědil po profesorovi Chaneym, jediný talisman, který ho nikdy nezklamal, který dal smysl jeho životu a určil jeho směr: lásku ke knihám. Učitel ve škole mu půjčil Irvingovu „Alhambru“; u sousedů, pro něž knihy byly jenom náhodným majetkem, nalezl životopis Garfieldův, „Cesty po Africe“ od Paula du Chailla a pro něho tak významný lyrický příběh „Signu“ od Ouidy, o nemanželském synu italského venkovského děvčete a potulného malíře, který zakouší bídu a strážně, ale později se z něho stane jeden z největších italských hudebních skladatelů — v hlavních rysech měl Jack podobný životní úděl. Jack píše, že četbou „Signy“ se mu rozšířil jeho úzký obzor

ohraničený kopci a že se mu pak všechno zdálo v životě možné, jen když se toho odváží. Elize prý tehdy řekl: „Víš, Lizo, já se neožením, dokud mi nebude čtyřicet. Budu mít veliký dům a v něm jeden pokoj plný knih.“ Když mu bylo čtyřicet, měl už velký dům a v něm kolik pokojů plných knih....

Ačkoli Jack chodil rád s Johnem Londonem do polí a rád s Elizou četl knihy, přece byly pro něho ty dva roky v Livermoru neutěšené. Nebyl už tak malý, aby nevytušil, že mezi rodiči leccos není v pořádku; život doma byl jen zřídka radostný, protože tam vládla potřeštěná a náročná Flora, vyvolávala výstupy a dostávala srdeční záchvaty. Jack ji měl rád, jako každé normální dítě miluje svou matku, a Flora mu neubližovala, ale nebyla prostě schopna mateřské lásky, a Jack tedy hledal tu lásku u Elizy. Jenže Flora si vzala na byt a stravu staršího vysloužilce z občanské války Shepharda, vdovce s třemi dětmi, a tak Eliza měla v šestnácti letech na starost vaření, vedení domácnosti, péči o Jacka a ještě musela dělat maminku třem dětem Shepardovým, z nichž nejstaršímu bylo třináct.

Koncem prvního roku John London znovu v Oaklandu proslul jako pěstitel pěkné zeleniny a po jeho zboží byla na trhu vždycky poptávka. Vyhlídky do budoucna byly tak skvělé, že rodiče prvně Jackovi koupili tričko, a to ho málem uvedlo v nadšení, protože doposud nosil všechno jen tak spíchnuté doma. Ale Flora pořád nebyla spokojena s tím, že ještě nezbohatli, a znovu si vymyslíla nový plán. Často brala Johna s sebou přes záliv na obchodní cesty do San Franciska, seznámila ho s ředitelem jednoho velkého hotelu a sjednala s ním smlouvu, podle níž si měl John zařídít velkou drůbežárnu a ředitel hotelu měl od něho kupovat všechna kuřata a vejce.

John se v chovu slepic vůbec nevyznal, ale vzal si na ranč hypotéku a postavil ohromné kurníky a líhně vytápěné párou. Ředitel hotelu v San Francisku od něho krátký čas kupoval všechna snesená vejce a kuřata, která měl John na prodej. Ale pak stihla Johna trojí pohroma: Eliza, která se starala o slepice, provdala se za Shepharda a z ranče odjela; celé jedno hejno slepic zahubila epidemie a ty, co zbyly, přestaly snášet. London měl všechny peníze investovány v olivových a ovocných sadech a v líhních, a když musel zaplatit anuitu z hypotéky, neměl z čeho. Banka mu hypotéku vypověděla. Londonovi se znova octli na silnici, s veš-

kerým svým majetkem naloženým na fůře, jíž vozili brambory na trh.

Jackův mozek byl jako seizmograf: zaznamenával i nejslabší otřes v jeho okolí a těch otřesů byla spousta, protože příštích třináct let Londonovi žili v bídě a zklamání. Jack London často říkal, že neměl žádné dětství, že hned od prvopočátku života ho soužila chudoba, pokud se pamatuje, a že ta chudoba byla chronická.

Když bylo Jackovi deset let, zanechal John London nadobro farmaření, které měl tak rád, a vrátil se do Oaklandu. Jack byl hubený, ale svalnatý, měl světlou pleť a tmavomodré oči a pořád těžce nesl ztrátu Elizy. Nebyl rváč, ale podle kalifornského obyčeje zavedeného v Garfieldově škole musel se každý chlapec poprat s každým svým spolužákem, a Jack se tedy naučil brzy boxovat. Nejraději chodil s otcem střílet kachny a lovit ryby na alamedskou hráz — dostal od otce vlastní malou pušku a rybářský prut. Neustálé nezdary v podnikání a spěšné stěhování, hrůza ze spiritistických seancí, jejichž byl obětí, předtucha, že se před ním něco tají, pokud jde o otce, to vše způsobilo, že Jack býval zaražený, bojácný a rozpačitý. Muž i chlapec, utýraní Flořiným ubližováním a neschopní bránit se proti křivdám, přilnuli k sobě vzájemně čím dál tím opravdovější náklonností. Jak jen mohli, utkali spolu z domova a celé dny se nešťastní toulali v přístavě. Měli se rádi a úplně si důvěřovali, ale byla to láska zachmuřená smutkem.

V Oaklandu si Londonovi pronajali domek s arkýřem ve Východní sedmnácté ulici. Hned vedle byla Kalifornská prádelna bavlny, kde pracovalo mnoho děvčat ze Skotska. Ředitel se dotázal Johna Londona, zda by si chtěl děvčata vzít na stravu a na byt. John byl už pětapadesátiletý, zkrušený vědomím, že se nikdy nevrátí k hospodaření na vlastní půdě a víckrát už nebude svým vlastním pánem, a takových zaměstnání, jaká by ještě mohl zastávat, nebylo mnoho. Proto se uvolil, že si zařídí penzión.

Flora měla dobrou hlavu a na počátku každého nového podnikání ji dovedla dobře uplatnit. Johna, který se vyznal v jakosti potravin a v jejich cenách, posílala nakupovat a sama dozírala na vaření. Měla na bytě dvacet děvčat ze Skotska — ta byla u nich spokojena, ředitel prádelny také a Londonovi za pár měsíců vydělali tolik peněz, že mohli

složit první splátku na domek. Když na výzvu ředitelství přibyla do přádelny nová skupina děvčat, Londonovi na Flořino naléhání koupili parcelu vedle svého domku a postavili si ještě jeden, aby měli děvčata kde ubytovat.

Nějakou dobu šlo všechno dobře. Přibyl jim příjem z druhého domku, protože Flora zatím hospodařila šetrně. Ale pak u ní nabyla převahy její vrozená vrtkavost. Přestala se o penzión zajímat — stěžovala si, že takhle si hned tak nevydělají dost, že vést domácnost je nudné zaměstnání.... že je spousta jiných, v kterých žena tak chytrá jako ona může zbohatnout. Začala utrácet — nikdo nevěděl zač — a když měli zaplatit anuitu na obě hypotéky, nebyly na to peníze. Banka jim oba domky zabavila, a tím Johna Londona připravila o poslední stálý zdroj výdělků.

Dokud se penzión Londonovým ještě vyplácel, učinil malý Jack senzační objev — oaklandskou veřejnou knihovnu a čítárnu. Četl už pět let, ale za tu dobu se mu dostalo do rukou jen pět opravdu hodnotných knih — ostatní, které mu poskytl chudý venkovský kraj, byly samé krváky a staré kalendáře. Chlapec nejasně tušil, že na světě jistě jsou ještě jiné knihy, a krásnější, ale neměl ponětí, jak by se k nim dostal. Jakživo se mu ani nesnilo, že je na světě něco takového jako veřejná knihovna, kde jsou tisíce knih, které si může na požádání zdarma vypůjčit. Datoval své duchovní zrození od chvíle, kdy se s čepicí v ruce a s vyvalenýma očima octl ve dveřích dřevěného stavení — nemohl uvěřit, že je na světě tolik knih. Od toho dne, ať sebevíc trpěl, ať měl mozek i duši sebevíc ztýrané, ať zakoušel porážky a opovržení, ať byl štváný jako psanec, víckrát už nebyl úplně opuštěný. Protože syn profesora Chaneyho konečně nalezl domov.

Ve veřejné knihovně se prvně setkal se vzdělanou ženou, která byla ve světě knih jako doma. Slečna Ina Coolbrithová postřehla, jak mu zářily oči, když procházel mezi policiemi s knihami a špičkami prstů zálibně přejížděl po jejich vazbách. Než mu přiskočila na pomoc, našel si náhodou už sám „Příhody Peregrina Pickla“ od Smolletta a „Novou Magdalenu“ od Wilkieho Collinse. Slečna Coolbrithová se za chvíli už dověděla, že hošík nejvíc touží po dobrodružných knihách a cestopisech, po knížkách o mořeplaveckých výpravách a objevech, a bohatě ho jimi zásobovala. Byla to žena velmi kultivovaná, básnířka vyznamenaná cenou státu Kalifornie, a Jack si ji zamiloval. Každý den se snažil

prečíst všechny knihy, které mu půjčila, aby je nazítří vrátil a mohl se s ní znovu setkat.

Chlapec ty knihy hltal, tak byl vyhladovělý: četl v posteli při jídle, na cestě do školy i ze školy, v přestávkách, kdy si ostatní hoši hráli. Měl vznětlivou obraznost a citlivou nervovou soustavu, měl sklon citově se rozplývat a snadno se nechal dojmout. S rozkoší se nechával unášet zápallem svých hrdinů a strhávat do hlubin zoufalství, když ti, s nimiž se ztotožňoval, byli nešťastní nebo poraženi. Za krátkou dobu zhltal tolik knih, až z toho měl těžkou nervózu. Říkal každému: „Nech mě být, nerozčiluj mě!“ Při četbě o dávných cestovatelích a romantických plavbách po moři si vzal do hlavy, že Oakland je brána do světa, a jakmile se mu podaří odtamtud uprchnout, ihned ho čekají vzrušující dobrodružství.

John London zatím přišel o zaměstnání. Rodina se odstěhovala do chudšího bytu v třídě San Pablo poblíž Dvaadvacáté ulice. Nedaleko odtamtud bydlila teta Jenny a k ní Jack neustále chodil se svými trampotami a radostmi, jedl u jejího stolu, nechal si vydrhnout krk a pročesat vlasy nad její kuchyňskou výlevkou a po laskavém pohlázení po rameni se odtamtud znovu pouštěl do světa. John London se snažil nalézt pravidelné zaměstnání, ale nesehnal nic, a tak musel jedenáctiletý Jack živit rodinu. Vstával ještě za tmy a chodil si pro balík novin, které roznášel na určité adresy, a po škole měl druhou roznášku. Vydělával si tím dvanáct dolarů měsíčně a celý svůj výdělek odevzdával Floře. V sobotu ráno také rozvážel led a večer a v neděli odpoledne stavěl kuželky v kuželníku. Na čtení měl málo času — poučoval se nyní o životě z první ruky, pral se s kameloty, býval svědkem hospodských rvaček, seznamoval se s barvitým životem v oaklandském přístavě, kde kotvilo hodně velrybářů z Arktidy, sběratelů kuriozit z jižního Tichomoří, pašeráků opia, čínských džunek, yankejských plachetnic, pirátských lovců ústřic, řeckých rybářů, začouzených nákladních parníků, obytných lodí, škunerů, dvojstěžníků a člunů rybářských hlídek. Tak jako v deseti letech hledal únik z domova v dobrodružných knížkách, stejně ve třinácti odtamtud unikal do přístavu a k moři.

Konečně John London našel zaměstnání jako noční hlídač v Daviesově loděnici, ale to neznamenal, že by si Jack své vydělané peníze mohl ponechávat na útratu. Nikdy si nesměl kupovat hračky, třeba káču nebo kuličky

nebo nožík, a tak vyměňoval zbylé výtisky novin za obrázky přidávané do každého balíčku cigaret — proslulých dostihových koní, pařížských krasavic, přeborníků v řecko-římském zápase — a když měl pohromadě celou kolekci, prodal ji za věci, po nichž tolik toužil a které si jiní chlapci mohli kupovat za peníze. Časem z něho byl chytrý obchodník a to se mu pak hodilo, když s nakladateli sjednával honoráře za své spisy. Měl tak bystrý postřeh pro odhad cen, že se s ním druzí hoši radili, když chtěli hadráři prodat posbírané hadry, láhve, pytle a plechovky od oleje, a platili mu provizi.

Ina Coolbrithová o něm vypráví, jak tehdy přicházel do knihovny s balíkem novin v podpaždí, celý nahrbený pod tím nákladem, chudě a ošuměle oblečený a zanedbaný, jak ji prosil, aby mu půjčila něco pěkného ke čtení, a jak se vrhal na každou knihu, která měla zajímavý název. Píše o něm, že měl sebedůvěru a přesvědčení, že jednou dosáhne, čeho chce. A tu se jeví hlavní a základní rozpor v Jackově povaze: byl bojácný a plachý, protože nemanželský původ a rozvrácené poměry doma v něm budily pocit méněcnosti a nejistoty, a přitom si důvěřoval a byl si sebou jist, protože po profesorovi Chaneym zdědil bystrý mozek.

Z let, kdy chodil do veřejné školy, není o něm známo nic zvláštního. Frank Atherton, jeho spolužák z Colovy školy, vypráví, že když se Jack dověděl, jak draho Číňané platí za maso divokých koček, aby jim dalo sílu v bojích jejich tajných spolků, udělali si s Frankem praky a vypravili se do Piedmontských kopců na lov divokých koček, protože si Jack chtěl vydělat tolik peněz, aby mohl utéci ze školy a stát se spisovatelem — je to typický případ dodatečného rozpomínání na něco, co se zatím stalo skutečností. Frank vypráví ještě o jiné příhodě, která se zdá příznačnější: oba chlapci si v přístavě najali loďku a vyjeli si na lov vodních slípek. Jackovi spadl dvaadvacetikalibrový revolver do moře, a protože Frank uměl plavat, Jack na něm chtěl, aby se pro něj potopil do hloubky pěti sáhů. Když to Frank odmítl, Jack v záchvatu zlosti hodil obě vesla do vody a chlapci se potom kolik hodin museli bezmocně nechávat unášet vlnami. V Colově škole měli každý den ráno sborový zpěv a učitelka si všimla, že Jack nezpívá. Zeptala se ho proč. Jack odpověděl, že sama nedovede zpívat a že by si u ní zkazil sluch, protože zpívá o půl tónu níž. Učitelka požádala ředitele, aby Jacka potrestal. Ředitel ho poslal zpátky s písemným vzkazem, že se chlapci může odpustit,

ale že každý den ráno musí napsat slohový úkol za těch patnáct minut, co trvá sborový zpěv. Jack si vysvětluje, že tenhle návyk ze školy mu později prospěl v dobách, kdy musel každý den za dopoledne napsat tisíc slov.

Mimo knihy bylo jeho největší celoživotní láskou moře. Jak měl chvíli volno, bloumal v zátoce kolem Yacht klubu a číhal na příležitost, aby vypomohl někde na lodi a něco si tím přivydělal k penězům, které musel přinést domů. Majitelé jacht si ho oblíbili, protože byl odvážný, na nerozbouranějším moři se nebál vyšplhat na ráhno a nedbal na to, že se celý zmáčí. Platili mu trochu za drhnutí palub a naučili ho všemu, co věděli o malých plachetnicích. Zanedlouho už dovedl skasat plachtu i v prudkém větru.

Když mu bylo třináct, měl v deseticentových a pěticentových mincích naspořeny dva dolary z peněz, které si bez výčitek svědomí ponechával z toho, co odevzdával Floře. Koupil si starou loďku, projížděl se v ní sem a tam po přístavě a někdy se pouštěl i kousek dál na záliv. Nemohl se pouštět daleko, protože loďka neměla spouštěcí ploutev a neustále do ní zatékalo. Musel ustavičně vylévat vodu, v přístavě vrážel do člunů a často se s loďkou překotil, ale zkušenostmi a chybami nabýval cviku. Byl nejšťastnější, když pod svou loďkou cítil vzdouvání vln, když měl na rtech příchut mořské soli a mohl se rozkřiknout „Drž ji v závětrří!“ — třeba byl v loďce sám a chtěl se jen tak pocvičit.

Ve třinácti letech ukončil Colovu školu. Jmenovali ho třídním kronikářem a na konci školního roku v nejvyšší třídě měl pronést řeč na rozloučenou, ale neměl slušný oblek, v kterém by se mohl ukázat, a tak se oslavy raději vůbec nezúčastnil. Nebylo ani pomyšlení, aby postoupil do střední školy, protože John čím dál tím hůř sháněl nějaké trvalejší zaměstnání. Jack dál roznášel noviny, večer je také prodával v oaklandských ulicích a chopil se každé příležitosti práce, jaká se mu naskytla, jako třeba zametání hostinců v parku Idora nebo Weasel po nedělních zábavách. Byl ošuntělý, pracovitý chlapec s krásným úsměvem, při němž se mu blýskaly zuby, otužilý zápasník, náchylný k návalům zlosti, a strašně nedůtklivý.

Všelijakou příležitostní prací, o níž Floře ani nepověděl, nastřádal si za rok šest dolarů, které potřeboval, aby si mohl vykoupit svobodu v podobě staršího lehkého člunu. Když se mu podařilo naspořit dolar pětasedmdesát centů, natřel si jej pestrými barvami, příští měsíc si příležitostnými pracemi

vydělal dva dolary na plachtu, a když si konečně ušetřil dolar čtyřicet centů na vesla, měl před sebou celý širý svět a mohl jej probádat. Plachtil daleko na záliv, při odlivu se pouštěl na tresky ke Kozímu ostrovu a večer se navracel s přílivem; za převozními parníky nabíral vodu, zpíval si námořnické písničky „Zatni mu žlu“ a „Whisky, John, whisky“, ve vichřici ho bíle zpěněné prudké vlnobití zalévalo vodní tříští; křižoval po zálivu v burácivém jihozápadáku — plavci na velkých škunerech mu do očí tvrdili, že lže, že tohle není možné.

Byl nejen nebojácný, byl drze odvážný: čím bylo počasí horší, tím víc riskoval, protože se moře nebál. Pořád si vymýšlel a představoval, čím je, a rád si říkal, že je viking, potomek těch statných námořníků, kteří se v nekrytém člunu přeplavili přes Atlantický oceán; že je Anglosas, příslušník bojového kmene, který se nebojí ničeho. A protože se nebál ničeho, protože s mořem srostl, byl z něho jeden z nejdovednějších plavců na malých člunech v záludném sanfranciském zálivu.

Při prodeji novin a různých příležitostných pracích si vždycky vyšetřil hodinu dvě denně, které strávil v milovaném člunu. Ale ještě než mu bylo patnáct, Johna Londona srazil vlak a těžce ho zranil. Londonovi tehdy bydleli ve starém domku u přístavu, prý v hrozně zaneřáděném prostředí. Kolem bylo mnoho chajd postavených z trosek a trupů rozebraných lodí a ze starých bouraček. Jack chodil otrhaný, doma neměli zavedenou kanalizaci, a soužil ho neukojitelný hlad, tělesný i duševní. Dostal trvalejší zaměstnání v konzervárně v opuštěné kůlně u železniční trati, kde mu platili deset centů za hodinu. Denně pracoval nejméně deset hodin, ale někdy i osmnáct až dvacet hodin. Kolik týdnů se třeba nedostal z práce dřív než v jedenáct v noci. A měl před sebou dlouhou cestu pěšky domů, protože nemohl utrácet za jízdné na tramvaji. Než se dostal do postele, bylo půl jedné, a ráno v půl šesté už jím lomcovala Flora a pokoušela se s něho stáhnout přikrývky, které si, rozespálý, zoufale přidržoval. Skrčil se v nohách postele, jen aby zůstal přikrytý. Nakonec musela Flora vší silou strhnout přikrývky s postele na zem. Ale Jack sletěl s nimi, aby se uchránil před zimou v místnosti. Málem že nedopadl na hlavu, ale i v polospánku duchapřítomně seskočil a rázem se probudil.

Potmě se oblékl, šel do kuchyně k výlevce umaštěné

po mytí nádobí a umyl se zapařaným mýdlem, které skoro nepěnílo. Pak se utřel vlhkým, špinavým a roztrhaným ručníkem, po němž mu na obličej zůstala vlákna cupaniny, posadil se ke stolu a snědl krajíc chleba k horké tekutině kalné jako bahno, které se u Londonových říkalo káva. Venku bylo jasno a zima — jakmile se dostal na vzduch, celý se roztrásl. Hvězdy na nebi ještě nezačaly blednout a celé město tonulo v temnotách. Když vcházel do vrat konzervárny, vždycky se ohlédl k východu, kde se nad klikatým horizontem střech začínalo pomalu šířit bledé světlo.

1. ledna 1891 si v notesu začal zapisovat do rubriky „Peněžní příjmy a vydání“. Toho dne si zaznamenal, že vlastní na hotovosti patnáct centů. Od prvního do čtvrtého ledna utratil pět centů za citróny a deset centů za mléko a chleba, a pak si už nemohl koupit nic, dokud nedostal svou mzdu deset a půl dolaru, z níž zaplatil šet dolarů na činži a nakoupil máslo, petrolej, ústřice, maso, ořechy, led, koblihy a za pětadvacet centů pilulky Floře. Padesát centů zaplatil za vyprání prádla — jak je vidět, Flora se moc nepřičíňovala o snížení výdajů na domácnost.

Když se Jack takhle plahočil a dřel kolik měsíců, neměl ani kdy zajít si do knihovny a večer býval tak utrmácený, že se mu nad knihou zavíraly oči, tu se často v duchu ptal, zda je smysl života v tom, aby z člověka bylo tažné zvíře. Po profesorovi Chaneym měl krátké, ale statné tělo, takže na svou práci fyzicky stačil, avšak povahou nebyl uzpůsoben pro mechanickou dřinu. Byl syn intelektuála, zdědil po otci bystrý mozek a plodnou obraznost a taková práce ho ubíjela a bouřil se proti ní. Kdyby byl věděl, že je syn profesora Chaneyho, nebyl by se možná tolik trýznil otázkou, proč tak nenávidí tuhle práci, když se ostatní hoši a děvčata z jeho okolí až hrdinsky klidně smířují se svým údělem.

Vzpomínal na svou loďku, jak leží ladem u přístavní hráze a jak se na ni přichycují vilejší; vzpomínal, jak se po zálivu každodenně honí vítr, na východ a západ slunce, které teď už nikdy nevidá, a jak ho celé tělo pálilo v slané mořské vodě, když do ní z loďky skákal po hlavě. Viděl jen jedinou cestu, jak se vysvobodit z té lopoty, která ho ubíjela, a přitom uživit rodinu: pustit se na moře. Podle svých vlastních slov byl Jack tehdy v květu jinošství, vzrušovala ho romantická dobrodružství a snil o bujném životě ve světě bujných lidí.

V neděli odpoledne se loudal pro přístavě a vyjížděl si v loďce na záliv, a tak se seznámil s pirátskými lovci ústřic, dobrodružnou čeládkou pijáků, kteří podnikali loupežné výpravy na ústřice do Dolního zálivu, kde je pěstovali soukromí podnikatelé, a svou kořist pak s pěkným ziskem prodávali v oaklandských dokách. Jack věděl, že na úlovku za jedinou noc jen málokdy utrží méně než pětadvacet dolarů a že ten, kdo má vlastní člun, může na jednom úlovku vydělat až dvě stě dolarů. Zanedlouho se dověděl, že jeden starší pirát, Francouz jménem Frank, chce prodat plachetnici RAZZLE DAZZLE a ihned se rozhodl, že si ji koupí! Měl po otci vášnivou touhu skoncovat s otupující prací u strojů, po matce zase zdědil nevážnost ke kázni, která jeho druhům v zaměstnání diktovala, aby se drželi své poctivé, třeba úmorné dřiny.

Ale kde měl sehnat tři sta dolarů — copak vůbec někdy poznal něco jiného než chudobu? Běžel rovnou k tetě Jenny, své bývalé chůvě. Půjčí ty peníze svému blému děcku? Jakkak ne! Co patřilo tetě Jenny, to patřilo i jemu.

Příští neděli se ve své loďce vypravil k plachetnici RAZZLE DAZZLE, kde zastihl partu „pod párou“, a nabídl se jako kupec. V pondělí ráno měl ve výčepu POSLEDNÍ NADĚJE schůzku s „Frantíkem“ Frankem a vysázel mu zlaté lesklé dvacetidolary od tety Jenny. Jakmile si na tu koupí připil sklenkou whisky, kterou polkl prvně v životě, honem utíkal k své loďce, vytáhl kotvu a s přitáženou plachtou, šikmo proti větru, který fičel třímílovou rychlostí, hnál RAZZLE DAZZLE rovnou do návětrí. Plnými plicemi vdechoval mořský vzduch, vítr za ním načechrával vlny. Předháněly ho pobřežní dvojstěžníky a jejich sirény houkaly, aby se jim otevřely zdvihačí mosty. Rychle ho mýjely vlečné parníky s červenými komíny a RAZZLE DAZZLE se kolébal v jejich zčerených brázdách. Táhl ze suchého doku na moře nákladní loď pro dopravu cukru. Vodní hladinu zaplavovalo slunce a život byl nádherný. Měl říz a příchut a jiskru vzpoury, dobrodružství a romantiky.

Už zítra bude z Jacka pirátský lovec ústřic, svobodný bukanýr na sanfranciském zálivu, omezený jen jeho rozlohou a zákony století. Ráno se zásobí jídlem a vodou, vztyčí velikou hlavní plachtu, a ještě než skončí odliv, vypluje od říčního ústí na záliv. Pak povolí lanka, a jakmile nastane příliv, překřížuje záliv k Chřestovému ostrovu a zakotví u břehu. Konečně se mu splní jeho sen: stráví noc na vodě.

II

K svému úžasu se Jack dověděl, že koupí člunu RAZZLE DAZZLE za tři sta dolarů od „Frantíka“ Franka zdědil po něm i Mamii, královničku pirátských lovců ústřic. Frankově holce se hezký Jack s upřímným kukučem zalíbil hned tehdy, když v loďce přirazil k RAZZLE DAZZLE a sjednával s Frankem obchod. Mamie byla šestnáctiletá, hezká a divoká. Jack o ní pak říkal, že byla prudká, ale hodná, a že s ní měl v malé kajutě na RAZZLE DAZZLE opravdový domov, první domov, který v životě poznal. Byl v pirátské bandě nejmladší majitel lodi a jediný měl na palubě ženu. Vzbudilo to rozruch, musel se s druhými piráty kolikrát poprat, aby si děvče uhájil, a jednou ve rvačce s žárlivým „Frantíkem“ Frankem div nepřišel o život.

Hned první noc se zúčastnil výpravy na ústřicová ložiska. Měl na RAZZLE DAZZLE pomocníka, přístavního pobudu zarostlého černými vousy, říkalo se mu Pavouk, který už předtím sloužil na RAZZLE DAZZLE a byl ochoten zůstat u Jacka posádkou. K pirátské partě patřili Velký Jirka, Čert Nelson, Tlama, Bob Kořala, Řek Niki a ještě asi deset statných a neohrožených chlapů, z nichž někteří byli propuštění trestanci — ti se všichni shromáždili ve vysokých námořnických botách, vystrojení na moře a s revolvou u opasku. Sjednali si plán a flotila vyplula, chráněna temnotou. Měsíc ubýval a byla to největší červnová výprava; v Dolním zálivu spustili na vodu malé člunky a veslovali v nich ke břehu, dokud nenarazili na měkké bahno. Jack zamířil přídí k velkému ložisku, rozevřel pytel a začal sbírat ústřice. Ve chvíli měl pytel plný a musel se vrátit na RAZZLE DAZZLE pro nový. Za úsvitu se o závod hnál do Oaklandu, aby co nejdříve byl na trhu, nasbírané ústřice prodal výčepníkům a hostinským a vydělal si za noc tolik jako za tři měsíce práce v továrně na konzervy. Připadalo mu to jako nejnádhernější dobrodružství. Tetě Jenny splatil část vypůjčených peněz a zbytek odevzdal Floře na domácnost.

Za pár týdnů si už mezi nejdravějšími chlapy v pirátském loďstvu vysloužil ostruhy. Když se „Frantík“ Frank pokusil na svém škuneru přepadnout RAZZLE DAZZLE aby se znovu

zmocnil Mamie, postavil se Jack na zádi s odjištěnou puškou v ruku, nohama udržoval člun v rovnováze a přiměl svého padesátiletého soka, aby se opřel do kormidla a honem uhnul stranou. Potom jednou pyšně vplul na RAZZLE DAZZLE do přístavu s největším nákladem ústřic ze všech lodí s dvoučlennou posádkou — tehdy pirátské loďstvo zůstalo na lovu v Dolním zálivu a jediný Jack se za úsvitu vrátil z kotviště u Chřestového ostrova; ve čtvrtek v noci se celá flotila hnala o závod na ranní trh a Jack na RAZZLE DAZZLE bez kormidla tam byl první, takže na pátečním ranním trhu hravě prodal celý svůj úlovek.

Když na RAZZLE DAZZLE přišla rybářská hlídka, Jack nevrlého strážníka pohostil svými nejlepšími ústřicemi s pepřem a hnál ho se džbánkem pro pivo.

Byl družný a veselý. Měl rád své přátele mezi piráty a chtěl, aby ho také měli rádi. Když pili, pil s nimi; když se opili, patnáctiletý Jack chtěl dokázat, že je také muž, a dovedl se opít jako největší piják v jejich partě. Získal si mezi nimi pověst jako znamenitý námořník i jako silák, který se nebojácně pustí do rvačky, a veselý chlapík, který se rád bouřlivě řhtá každému vtipu, a tak s ním jednali jako se sobě rovným a s dobrým kamarádem. Ale mezi pirátskými výpravami na ústřice, když RAZZLE DAZZLE kotvil u přístavní hráze, chodil Jack do oaklandské knihovny na dlouhé rozhovory se slečnou Coolbrithovou a odnášel si s sebou náruče vybraných knih. Zamkl se v kajutě, aby ho kamarádi náhodou nepřistihli, lehl si naznak na pryčnu, hltal jednu knihu za druhou a přitom cucal tvrdé bonbóny nebo žvýkal turecký med.

Na lodích pirátské party byly pořád pitky, rvačky, boje na nože a přestřelky; kradly se čluny a pálily plachty, majitelé lodí a jejich posádky se mezi sebou i zabýjeli. Jack měl plnou hlavu příběhů o bukanýrech a námořních lupičích, o drancování měst a bojích se zbraní v ruce, a tenhle divoký a nevázaný život byl konečně syrová a holá skutečnost. Z pískovišť v oaklandské zátoce, kde si piráti vyřizovali své spory, kde se blýskaly rozmáchlé nože a písek se metal sokům do očí, vedla cesta do širého dobrodružného světa, kde se budou svádět boje za vysoké cíle a romantické mety.

Jack se kolik měsíců plavil na plachetnici RAZZLE DAZZLE splácel tetě Jenny až do posledního centu těch tři sta dolarů, které si od ní vypůjčil, podporoval rodinu, zakusil na sto vzrušujících a nebezpečných dobrodružstvích mezi rybáři

v zálivu a s Mamíí užíval šťastných dní v kajutě na RAZZLE DAZZLE. Pak se spráhl s Čertem Nelsonem, dvacetiletým, ďábelsky smělým chlapíkem s herkulovskou postavou. Jack staršího kamaráda zbožňoval, protože byl modrooký, světlomasý a vyčouhlý jako viking. V opilé rvačce, na níž se podílely posádky celého pirátského loďstva, prostřelili Čertu Nelsonovi ruku a jeho loď REINDEER narazila dnem na mělčinu a dostala trhlinu. Jack se přitom serval na pěsti se svým lodníkem Pavoukem, který zrádně zapálil hlavní plachtu na RAZZLE DAZZLE a zběhl k nepřátelské partě pirátů. Ti naskákali na Jackovu plachetnici, prorazili jí dno, pak ji zapálili a potopili. Jack a Čert Nelson spojenými silami REINDEER vyspravili, vypůjčili si od Johnnyho Heinholda, majitele výčepu POSLEDNÍ NADĚJE peníze na zásoby potravin, načerpali do sudů pitnou vodu a vypluli na REINDEERU k ústřicovým ložiskům.

Čert Nelson měl největší radost, když se kormidlováním o vlásek vyhnul pohromě. Měl ještě jednoho koníčka: nikdy neskasal plachty, ať dula vichřice, nebo foukal mírný větřík. Mnohokrát jen tak tak ušli smrti, protože si Čert Nelson troufal věci, na jaké by si nikdo jiný ani netroufal pomyslet. Jack proti jeho drzým kouskům nic neměl, dokonce se pokoušel svého mistra přetrumfnout — copak také nebyl viking, smělý a neohrožený?

Plavili se nazdařbůh a pirátsky pytláčili kolik set mil v pobřežních vodách — v zabahněných mělčinách, úžinách a říčních ramenech vtékajících do zálivu, vydělávali až sto osmdesát dolarů za noc, ale věčně byli na mizině, protože jakmile se Čert Nelson dostal na břeh, bláznivě se opíjel — při svém zápolení se smrtí a káznicí musel neustále být ve vzrušeném napětí. I v pití Jack s kamarádem držel krok — pokládal za svou povinnost vychlastat zrovna tolik sklenic whisky jako Čert Nelson, ačkoli vůbec neměl vrozenou zálibu v alkoholu a netoužil se opíjet.

Zanedlouho mu už nebylo zatěžko polykat whisky, která zpočátku měla tak odpornou chuť a páčila ho v krku. Začal si libovat v účinku opojných nápojů, v divém smíchu a zpěvu, lýtých rvačkách a nových přátelstvích, v nápadech, které se mu líhly v mozku a připadaly mu skvělé. Když se nic nedělo, z nudy pil, až se opil. Vždycky zabíhal do krajností, a proto se nerozvážně a navzdor snažil dělat všechno líp než ostatní kolem něho. Tak jako se potřeboval stát králem mezi pirátskými lovci ústřic, stejně se musel stát králem

pijáků. Opustil svou zbídačelou rodinu a utrácel ve výčepch peníze, jež nutně potřebovala na stravu a činži. Těm, kdo se už léta potloukali v přístavě, leccos už viděli a sami chlastali, brzy se znechutil patnáctiletý divous, který se neslýchaným tempem upíjel k smrti: hádali, že to vydrží tak rok.

Jednou v noci, bez peněz a žíznivý, ale s vírou pijáka, že se nečekaně naskytne něco k pití, seděl s Čertem Nelsonem v přístavní krčmě a čekal na kýženou příležitost. Znenadání tam vrazil Joe Goose s novinou, že na volební schůzi v Haywardu je chlast zadarmo, kolik ho kdo che. Že si jen musí obléknout červenou košili a nasadit helmu a nést v průvodu pochodeň. Po průvodu byly výčepy ještě otevřené a banda z oaklandského přístavu se v šesti řadách tlačila před politým nálevním pultem. Jackovi a jeho kamarádům se zdálo, že by to takhle trvalo dlouho, než by dostali pít, a tak vtrhli za pult, výčepníky odstrčili a zmocnili se lahví v policích. Venku na ulici zuráželi lahvím hrdla o betonový okraj chodníku a pili.

Joe Goose a Čert Nelson byli zvyklí na nezřetěnou whisky a znali už svou míru, ale Jack nikoli. Domníval se, že když je pít zadarmo, může toho vypít, kolik se do něho vejde. Za noc vypil víc jak litr whisky. Když bylo načase, aby se vrátil do Oaklandu, zakoušel muka — uvnitř byl jako spálený a div se nezadusil. Ve vlaku rozbil pochodní okno, aby se nadýchal čerstvého vzduchu, ale to zavdalo popud ke rvačce mezi piráty a Jack byl v bezvědomí sražen k zemi. Probudil se až za sedmáct hodin v jedné přístavní noclehárně, kam ho odtáhl Čert Nelson — tak blízký smrti, že se málem na vlasek splnila předpověď chlapů z přístavu, že nevydrží ani rok.

Ale Jack přece jen nebyl jako ostatní piráti, jinak by asi plundroval ústřicová ložiska a dál holdoval pití, až by ho jednou koule vpálená do hlavy sklátila na pitevní stůl v Benicii tak jako Čerta Nelsona, nebo až by se utopil, nebo až by ho ve rvačce ubodali k smrti tak jako jeho kamarády Tlamu a Boba Kořalu, nebo až by skončil ve vězení San Quentinu za horší zločiny než pirátský lov ústřic tak jako Pavouk a Řek Niki. Ale dědictví po profesovi Chaneym mu zburcovalo mozek. Pustil se za ušlechtlejším dobrodružstvím v exotičtějších končinách světa. Po každém flámu s Čertem Nelsonem zalézal přiotrávený alkoholem do kajuty na RAZZLE DAZZLE zamkl se tam a ote-

vřel některou svou zamilovanou knihu, aby pookřál četbou nových, ještě nečtených výtisků Kiplingova románu „Světlo, které zhaslo“, Melvillova „Typee“, Shawova „Nesociálního socialisty“ a Zolova „Germinalu“, které Ina Coolbrithová pro něho schovávala, když přišly z newyorských nakladatelství ještě zvlhlé a páchnoucí tiskařskou černí.

Pomalou a tápavě mířil tmou k světlu, ale stihla ho nehoda. S Čertem Nelsonem ukořistili velký úlovek a tři týdny byli opilí, podle Jackova doznání jen s občasnými přestávkami, kdy trochu vystřízlivěli. V jednu hodinu v noci, zpítý do němoty po flámu s partou rybářů, chtěl se Jack dopotácet na REINDEER zakotvený u mola v Benicii a spadl do vody. Strhl ho s sebou proud, který se žene Carquinezskou úžinou prudce jako přes vantroky. Měl prý tehdy těžký záchvat trudnomyslnosti a řekl, si že utopení bude skvělým vyvrcholením jeho krátkého, ale rušného života. Ve vodě mu bylo příjemně a byla to smrt důstojná hrdiny.

Proud ho unášel kolem Salanské hráze, kde bylo plno světla a lidí, ale Jack byl naschvál zticha. Teprve když si byl jist, že mu už nehrozí žádný zásah, zanotoval si hlasitě pod hvězdnou oblohou písničku, kterou si sám složil, a měl radost z pomyšlení, že se s celým tím krámem provždy loučí. V záři hvězd ležel ležet naznak na vodě, díval se na známá světla na molech, která míjel — červená a zelená a bílá, a každému dával smutně, sentimentálně sbohem. Jenže ve studené vodě vystřízlivěl a řekl si, že se mu ještě něchce umýt. Svlekl se a prudkými tempy vyrazil kolmo na směr proudu. Když se rozbřeskl úsvit, dostal se do prudkých vírů u Kobylího ostrova, kde se sráží vlnobití odlivu z Valleja a Carquinezské úžiny. Byl už vyčerpaný a celý prokřehlý, vítr od pevniny mu vháněl vlny do úst. Ještě pár minut, a skvělé romány jako „Volání divočiny“, „Mořský vlk“, „Železná pata“, „Martin Eden“, „Měsíční údolí“, „Bílý den“ a na sto nádherných povídek by bylo utonulo v příboji hnaném od zálivu San Pabla. Řecký rybář vracející se do Valleja vytáhl Jacka v bezvědomí do svého člunu. A to byl konec jeho divého pití na mnoho přštích let.

Za několik dní s Čertem Nelsonem přivázeli do Benicie náklad ústřic a zastavila je rybářská hlídka s návrhem, aby zanechali potulného pirátského života a stali se pomocníky státní policie na ochranu rybolovu. Sanfranciský záliv byl zamořen Čiňany, kteří pytláčili na garnáty, a Řeky, kteří kradli lososy, a tím se dopouštěli přestupků proti kaliforn-

ským zákonům platným pro rybolov. Když se nechali chytit, nebyli trestáni vězením, ale pokutou. Jackovi bylo nabídnuto padesát procent z pokut, které vybere od chycených proviničů. Jack už měl zkušenosti ve hře na policajty a zloděje, kolikrát v ní sehrál tu druhou úlohu, proto rád přijal první a stal se pomocníkem policie, která dozírala na zachovávání předpisů o rybolovu.

První úkol, jímž ho pověřili, bylo polapení čínských podloudných lovců garnátů, kteří chytali kořist do sítí s tak drobnými oky, že by jimi neprošel ani čerstvě vylihnutý pulec. Jack, Čert Nelson a ještě čtyři členové hlídky vypluli z oaklandského přístavu na REINDEERU a v člunu pro lov lososů. Po setmění zakotvili pod strmým břehem mysu Pinole a za úsvitu se v slabém větru od pevniny pustili napříč přes záliv. Džunky pytlácké flotily ležely na vodě roztažené do půlkruhu na vzdálenost tří mil a každá džunka byla připoutána lanem k bóji, na níž byla připevněna síť na garnáty. Číňané spali v podpalubí.

Jack měl rozkaz vylodit Čerta Nelsona a Jirku, člena své hlídky, každého do jedné džunky a sám se měl spustit do třetí. Přiblížil se k první džunce ze závětrné strany, přitáhl hlavní plachtu a pomalu proplouval kolem zádi, aby Čert Nelson mohl přeskočit na džunku. Ale to se už rozlehlo poplašné troubení na lasturu. Na palubách se začalo hemžit polonahými Číňany. Jack na REINDEERU přirazil k boku druhé džunky, aby na ni mohl přeskočit Jirka. Pak povolil lanka hlavní plachty a po větru se rozjel proti třetí džunce, tak aby ji napadl od závětrné strany. Lodi se prudce srazily a obě dlouhá vesla na pravém boku džunky se polámala. Rozezlený Číňan v žlutém hedvábném šátku, ovázaném kolem obličeje podobaného od neštovic, vztekle zařval, sochořem s okovanou špicí se opřel do příďe REINDEERU a začal sražené lodi rozestrkávat. Jack jen povolil lanka kosatky, a jakmile se REINDEER kousek odsunul, skočil s lanem v ruce do džunky a připoutal ji k REINDEERU.

Samotný a beze zbraně se octl tváří v tvář pěti hrozivým Číňanům, kteří měli všichni za opaskem dlouhou dýku. Výhružně se k němu blížili, ale Jack se ani nehnul, stál tam s rukou na zadní kapse kalhot. Číňané kousek ucouvli. Nařídil jim, aby na přídi džunky spustili kotvu. Když nechtěli, šel sám na příď ke kotvě, spustil ji a s rukou stále na té prázdné kapse přinutil Číňany, aby přelezli na REINDEER. Pak se v něm pustil ke džunce, na které prve

nechal Jirku, a ten s revolverem v ruce také nahnal své Číňany na palubu REINDEERA.

Číňan v žlutém hedvábném šátku přejel rukou Jackovi po zadní kapse kalhot a nenahmátl v ní revolver. Honem navedl své lidi, aby se vrhli na Jacka a Jirku a hodili je do moře. Jirka, člen policejní hlídky ozbrojený revolverem, se vystrašil a chtěl na Jackovi, aby přirazil ke břehu pod mysem Pedro a Číňany tam vylodil. Jack odmítl. A tu Jirka namířil revolver na Jacka a rozkřikl se: „Tak co, popluješ ke břehu, nebo ne?“

Jack, ohrožený revolverem a šestnácti Číňany s dýkami, honem uvážil, jaká by to byla hanba přijít o polapené pytláky. Jednu paži vymrštil vzhurů a ihned sehnul hlavu. Koule přelétla nad ním a on pevně popadl Jirku za zápěstí. Tu se na něho vrhli Číňané. Smykl Jirkou tak, aby se proti nim zaštitil jeho tělem, vyrval mu z prstů revolver, mrštil Jirkou proti Číňanovi v žlutém šátku, který se zapotácel a padl přes Jirku na palubu, a tak získal Jack čas, aby si revolverem vzal své zajatce na mušku.

Podíl na pokutách mu tehdy vynesl téměř sto dolarů.

Příští měsíce mu poskytly podobná dobrodružství. Jednou na martinezské hrázi mu opravdu šlo o život — musel uprchnout před hulákajícím davem rybářů, kteří se za ním hnali, protože dva z nich dopadl při pytláčení a zatkl; jednou zas přistihl dva muže, kteří protizákonně lovili na šňůru s udičkami, a honil se za nimi kolem velké lodi s nákladem pšenice; jindy ho zas na vodě předhonili dva jiní, kteří chytali jesetery na čínskou šňůru, a usvědčil je tím, že sám vytáhl šňůru s jesetery chycenými na udice — vážili dohromady přes tisíc liber.

Byl u policie na ochranu rybolovu zaměstnán téměř celý rok, a tak se seznámil, popral a zúčastnil různých dobrodružství se spoustou všelijakých lidí: s poctivými a odvážnými členy strážních hlídek, s námořníky, hazardními hráči, rybáři, výčepníky, lodními skladníky, lodivody — s muži, kteří už byli v kdejakém přístavu na světě, viděli už kdejakou pamětihodnost, napáchali všelijaké zločiny, pomilovali se s různými ženskými a zapletli se do nejrůznějších dobrodružství. Pokaždé, když křižoval po zálivu, pouštěl se až k úžině Zlatá brána, za níž se prostíral Tichý oceán. Tam někde v dáli byly vzrušující země Dálného východu, tam čekaly pestré zážitky a bájně přístavy, o nichž mu ti muži vyprávěli a o nichž čítal v knihách vypůjčených z oaklandské

knihovny. Bylo mu už sedmnáct, byl statný, silný a smělý, měl pocit, že už je opravdu mužský, a také tak vypadal. Chtěl poznat svět a mohl se dostat do světa jen jediným způsobem.

Stát se jednou plavcem na širých mořích bylo zřejmě jeho osudem už od té chvíle před čtyřmi roky, kdy si za dva dolary koupil dřevou loďku a prvně se v ní pustil na záliv. V sanfranciském přístavě kotvilo hodně lodí, mezi nimiž si mohl vybrat: nákladní i osobní parníky a dvojstěžňové plachetnice. Vybral si tu nejromantičtější a jednu z posledních, které ze zálivu vyplouvaly do korejských, japonských a sibiřských vod na devadesátidenní lov tuleňů harpunami — copak si kolikrát znovu a znovu nepřečetl „Bílou velrybu“ od Hermana Melvilla?

SOFIE SUTHERLANDOVÁ byla osmdesátitunová dvojstěžňová plachetnice stavěná na rychlou plavbu. Měla veliký rozsah plachet a výšku víc než sto stop od paluby ke kladkám na špičce hlavního stožáru. Přední podpalubí, kde si Jack uložil vak se šatstvem, se zužovalo do špičky, po obou stranách byla nad sebou lůžka a stěny mělo ověšené nepromokavými plášti, vysokými námořnickými botami a svítilnami.

Jack se doposud nedostal za Zlatou bránu, ale přihlásil se jako kvalifikovaný námořník, protože to znamenalo vyšší mzdu. Ostatní členové posádky se plavili na moři už kolik let a své námořnické zkušenosti a dovednost vykoupli dlouholetým utrpením. Byli to většinou statní kostnatí Skandinávci, kteří se plavili na moři už jako chlapci a nyní jako plně kvalifikovaní námořníci čekali, že jim budou takoví chlapci sloužit. Nebylo jim vhod, že toho výrostka na loď přijali jako jim rovného. Kdyby Jack nedokázal, že se ve své práci vyzná, musel by si sedm měsíců nechat líbit špatné zacházení, protože z lodi, která se plaví na širém moři, není úniku.

Jack byl mezi námořníky už dost dlouho, takže se vyznal v jejich jednoduché psychologii, a proto si umínil, že bude svou práci dělat tak dobře, aby ji nikdo nemusel dělat za něj. Když tahal za lano, nikdy nepředstíral slabost, poněvadž věděl, že jeho druhové z předního podpalubí právě na takový důkaz jeho méněcennosti číhají; dával si záležet, aby při nástupu nové směny byl na palubě mezi prvními a při příštím střídání směn aby z paluby odcházel mezi poslední-

mi — a nikdy nenechal plachtu nebo lano nesvinuté. Když bylo třeba přetáhnout lanka košových plachet, vždycky se ochotně vyšplhal do ráhnoví a zanedlouho se už vyznal v názvech i použití několika pro něho nových součástí lodní výstroje a v řízení kursu podle kompasu.

Třetí den po vyplutí na širé moře se SOFIE SUTHERLANDOVÁ octla uprostřed bouře. Jack měl právě službu u kormidla. Kapitán dost pochyboval, že ten sedmnáctiletý výrostek dokáže v prudké vichřici a na rozbouřených vlnách udržet kurs lodi. Pár minut ho pozoroval, pak pochvalně pokýval hlavou a šel se dolů navečeřet. Vítr šlehal Jackovi vlasy do očí, ale Jack zápasil s vichřicí a jásal, že dovede hodinu držet loď v určeném směru, sám a sám na palubě, kde není ani živá duše, protože celá posádka ponechala osud lodi v jeho rukou. Ačkoli se mu později v životě přihodilo ještě leccos, nikdy nebyl na nic tak hrdý jako na tenhle výkon.

Když bouře ustala a SOFIE SUTHERLANDOVÁ se zas hnala dál. Jack pozoroval, že se na něho druhové už netváří tak nevlídně. Občas se s někým popral, protože v předním podpalubí bylo těsno a přeplněno a Jack nestrpěl, aby mu někdo šlápl na nohu, ale povětšinou to byla příjemná plavba. Po bouři měli jedenapadesát dní pěkné počasí. Když v noci ležel naznak na přídi s rukami spjatýma pod hlavou, zdály se mu hvězdy tak pronikavě jasné a blízké, jako by byly nad ním připíchnuté na stříšce z plachtoviny. V hor-
kých dnech se Jack a jeho druhové polévali vědry mořské vody. Spřátelil se s Velikým Viktorem a s Axelem a po celou dobu té plavby se jim říkalo Veselá trojka.

Rád celé hodiny poslouchal kamarády v podpalubí, jak rozvláčně vyprávějí o bouřích na moři a obrovských úlovcích; a když ho to přestalo bavit, chodil do zadního podpalubí mezi lovce, kteří tam byli ubytováni, pušky měli pověšené na stěnách, ústa plná myslivecké latiny a pěsti utužené v tisícerych pranicích. V noci po službě u kormidla, když ostatní v předním podpalubí chrápali o sto šest, hbitě vklouzl do svého druhého života, tak jako dříve mezi pirátskými lovci ústřic. Podepřel si knihu o ocelovou stěnu přídi — buď to byly dějiny Orientu, nebo námořní povídky od Melvilla či Jacobse, které si koupil ze zálohy na mzdu, nebo Flaubertova „Paní Bovaryová“ či Tolstého „Anna Karenina“, které mu slečna Coolbrithová půjčila ze své soukromé knihovny — podržel si v jedné ruce misku s hořícím knotem, druhou si obracel listy a četl až do rána.

Konečně se na obzoru ukázaly sopečné homole Boninských ostrovů, **SOFIE SUTHERLANDOVÁ** proplula mezi úskalími do pěkně chráněného přístavu a zakotvila mezi pár desítkami takových tuláckých lodí jako ona. Po zátoce pádlovali domorodci v lehkých člunech s postranními vzpěrami a Japonci v sampanech. Jack už od svých sedmi let, kdy prvně četl „Cesty po Africe“, deset let snil o téhle chvíli, kdy se octne na druhé polokouli a uvidí ve skutečnosti, o čem dosud jen čítal v knihách. Nemohl se dočkat, až vystoupí na břeh a pustí se vzhůru strmou stezkou, která se ztrácela v zeleném kaňonu, znovu se vynořila na holém lávovém svahu a šplhala dál mezi palmami, květinami a podivnými viskami domorodců. A konečně si zaloví na sampanu!

Veselá trojka vystoupila na břeh. Jako dobří kamarádi museli se přece navzájem počastovat pitím. Ve výčepech potkávali známé ze sanfranciského přístavu, přátele z jiných cest po moři, kamarády z dob pirátských lovů. Každá taková schůzka zase znamenala společnou pitku, protože co jiného měli na světě než dobré kamarádství?

SOFIE SUTHERLANDOVÁ zůstala v zátoce u Boninských ostrovů deset dní, ale Jack se po strmé stezce mezi rozkvetlými keři nikdy nedostal až k viskám domorodců. Zato se skamarádil se spoustou velrybářů, vyslechl nekonečně dlouhé dobrodružné příběhy, opjel se s námořníky, zpíval pod hvězdnatým nebem bujně námořnické písničky, zběhlí plavčíci ho kolikrát ošidili o peníze, zkrátka stal se z něho oštrfílený námořník.

SOFIE SUTHERLANDOVÁ načerpala do nádrží pitnou vodu a rychle odplula k severu. Jack byl zařazen mezi veslaře, a tak celé dny obtáčel vesla a havlinky kůží a konopím, aby ani trochu nevrzaly, až se budou čluny plížit k tuleňům. Pak jednoho dne hlídka ve stožárním koši uviděla pobřeží Japonska a loď dohonila velké stádo tuleňů. Pluli za ním dál na sever až k sibiřskému pobřeží, takřka celé je vybili, stažené kusy házeli žralokům a kůže nasolovali. Jakmile Jack s lovcem, jemuž byl přidělen, přivesloval zpátky k lodi, ihned se s řeznickým nožem také pustil do stahování tuleňů a každodenně se takhle dřel na palubách pokrytých staženými kůžemi a zdechlinami, kluzkou vrstvou tuku a loužemi krve, která se řinula do odtokových kanálků. Byla to surová dřina, ale pro Jacka znamenala dobrodružství. Ani na chvíli se mu neprotivila.

Celé stádo tuleňů zlikvidovali ve třech měsících a **SOFIE**

SUTHERLANDOVÁ zamířila na jih k Yokohamě s nákladem nasolených kůží a s vyhlídkou na tučnou výplatu. V Yokohamě Jack potom pil bok po boku s muži, s nimiž čelil smrti a zakusil neuvěřitelné strážně, a škodolibě se rozpomínal, že ho ještě před pěti měsíci pokládali za výrostka, který nemá právo říkat si námořník.

Po návratu do San Franciska počastoval kamarády pitím, rozloučil se s nimi a na převozní lodi odjel domů do Oaklandu.

Rodina byla zadlužená a žila jen jakžtakž z několika dolarů, jež John London vydělával jako městský strážník v Brooklynu. Ze mzdy vyplacené na SOFII SUTHERLANDOVÉ Jack vyrovnal dluhy, koupil si zánovní klobouk, kabát a vestu, pár košil po čtyřiceti centech a dvojí spodní prádlo po padesáti centech. Zbylé peníze odevzdal Floře.

Okouzlení oaklandským přístavem ho úplně přešlo — netoužil se už toulat po světě. Několik dní ležel v knihách ve veřejné knihovně a pak už bylo na čase, aby se usadil.

Zvolil si nešťastnou dobu k hledání práce. Finanční panika v roce 1893 uvrhla Státy do těžké hospodářské krize: osm tisíc obchodních podniků zkrachovalo, mezi nimi hodně bank. Veškeré podnikání ustalo, prováděly se jenom nejn nutnější práce a velká většina dělníků byla bez zaměstnání. Kdo měl jakoukoli práci, toho pokládali za šťastlivce. Tělesně zdatní muži si v Oaklandu nevydělali víc než deset centů za hodinu. Takové nízké mzdy vyvolávaly stávky a výluky a nezaměstnanost neustále vzrůstala.

Jack nemohl nalézt jinou práci než v továrně na spřádání konopí, za deset centů na hodinu — za desetihodinový pracovní den si vydělal jeden dolar. V tovární hale stály dlouhé řady strojů, cívky se rychle otáčely. Bylo tam horko a dusno, ve vzduchu hustě vířila konopná cupanina a rámus byl tak přišerný, že člověk musel křičet z plných plic, aby ho druhý slyšel. U strojů pracovaly děti už od osmi let, některé zmrzačené, mnohé souchotinářské, všechny podvyživené a krtičnaté, a za šedesátihodinový pracovní týden vydělávaly dva dolary.

U Jacka začaly tehdy propukát prapodivné sklony a náchyllost k neklidu, jak to rád nazýval — trochu těžkopádné vyjádření vzrušeného zájmu o děvčata. V kajutě na RAZZLE DAZZLE žil manželsky s Mamí a měl i jiné otrlé ženské po

celém pobřeží zálivu, ale v sedmnácti letech byl najednou plachý a stydlý se za své drsné způsoby navyklé ve společnosti drsných kamarádů. Kdykoli se náhodou setkal s nějakou milou dívkou, zakoušel muka. Doposud se jen snažil být mužem, na děvčata neměl kdy, a tak se v nich vůbec nevyznal.

Protože pocházel z končin za hraniční čarou konvenčně slušného prostředí, měl doposud málokdy příležitost seznámit se s jemnými a hezkými děvčaty, která ho začínala zajímat. Skamarádil se s kovářským učedníkem Louisem Shattuckem, jehož líčí jako naivního čertovského kluka, přesvědčeného, že je náramně zkažené městské kvítko. Ten Jacka vzdělával. Po práci se mládenci šli domů navečeřet, pak se umyli, oblékli si čistou košili a sešli se v cukrárně, kde si koupili cigarety a kandysová cukrátko. Neměli přístup do rodin mladých dívek a nemohli chodit nikam, kde se tančilo, protože oba museli doma platit za stravu, a tak jim zůstávalo na útratu asi jen pětasedmdesát centů týdně. Mohli se navečeř pouze procházet po ulicích. Louis Jackovi ukázal, jak má vrhnout významný pohled, přitom se usmát a směle nadzdvihnout čapku, potom se zdráhavě uchichtnout a promluvit. Ale Jack byl bojácný a stydlivý. Dívky pro něho byly stále něčím zvláštním a podivuhodným, a v rozhodující chvíli mu vždycky chyběla potřebná podnikavost a smělá pohotovost.

Po čase už měl několik přítelkyň a některou občas vyvedl do Blairova parku — jenže jízdné stálo dvacet centů, safra, jen jízdné! a zmrzlina pro dva třicet centů... pak byl až do konce týdne na mizině. Zvláště se mu líbila irská děvčata: v zápisníku má zaznamenány adresy Nellie, Dollie a Katky, továrních dělnic, které bavilo jeho škádlení, kterým se zalíbil bujarý způsob, jakým tančil, a jeho nakažlivý smích. Ze všech nejraději měl Lízu Connellonovou, žehličku z jedné oaklandské prádelny. Líza byla hezká holka a nikdy neměla daleko pro uštěpačnou odpověď — dala Jackovi zlatý prstýnek se vsazenou kamejí, aby bylo vidět, že je její hoch.

Až konečně poznal lásku. Jmenovala se Haydie. Jednou se náhodou octl na sedadle vedle ní na schůzi Armády spásy. Bylo jí šestnáct, na hlavě měla baret s bambulí, sukni dlouhou až k botkám, křehký oválný obličej, krásné hnědé oči a vlasy a roztomilá ústa. Jack se do ní zamiloval na první pohled.

Smlouvali si tajné schůzky na půlhodinku a Jack na nich

poznal, co je to bláznivá mladistvá láska. Věděl, že to není největší láska na světě, ale troulal si tvrdit, že je to ta nejhezčí. Býval prohlašován za krále pirátských lovců ústřic, mohl se všude na světě osvědčit jako muž mezi muži, dovedl řídit plavbu lodí a vydržet vysoko v hlídkovém koši za tmy a bouře, odvažoval se do nejsprostších krčem v námořnické čtvrti, pouštěl se do nejsurovějších rvaček, ačkoli je sám nezačal, a dovedl u výčepního pultu počastovat všechny, s kým se tam sešel, ale nevěděl si vůbec rady, jak má mluvit a zacházet s tím křehkým děvčátkem, tak naprosto neznalým života a nezkušeným, že si vedle ní sám připadal neskonale chytrý. Sešli se všeho všudy snad jen desetkrát, dali si všeho všudy snad jen desetkrát hubičku, pokradmu, nevinně a zvědavě. Nikdy spolu nikde nebyli, ani na odpoledním představení v divadle, ale Jack si pokaždé zamilovaně namlouval, že je Haydie do něho zamilovaná. Věřil, že ji miluje. Déle než rok si o ní sprádal sny a vzpomínka na Haydii mu vždycky zůstala drahá.

Flora, která nikdy nezapomněla, že Jackův otec byl spisovatel, ukázala mu jedno číslo časopisu CALL vydávaného v San Francisku, a naléhavě mu domlouvala, aby poslal nějaký příspěvek do soutěže, kterou časopis uspořádal. Jack se chvíli rozmyšlel, pak si vzpomněl, jak se ~~SOME~~ SUTHERLANDOVÁ jednou blízko japonského pobřeží probila tajfunem, posadil se u kuchyňského stolu a začal psát. Psal rychle, šlo mu to snadno a bez námahy. Nazítří večer vyprávění dokončil, ještě je co nejlíp vybrousil a poslal do redakce časopisu. Byl odměněn první cenou — dostal pětadvacet dolarů. Druhou a třetí cenu získali dva studenti, jeden z Kalifornské a druhý ze Stanfordovy university.

I po pětácti letech je „Tajfun u japonského pobřeží“ svěží literární dílko, mocně působivé živostí a dramatickostí děje i rytmičností, jíž se autorovi podařilo vystihnout těžké vzdouvání moře, a věty sedmnáctiletého výrostka jsou harmonické, ačkoli měl jenom vzdělání, jakého mohl nabýt na střední škole. V časopise CALL stálo: „Nejvíce překvapuje smělost koncepce a neselhávající síla výrazu, jimiž se vyznačuje práce tohoto mladého autora.“ Prorocká slova!

Když John London četl první Jackovu uveřejněnou práci, byla to jeho nejšťastnější chvíle ode dne, kdy opustil Moscow ve státě Iowa; Flora se potichu radovala, jak se jí nápad vydařil, a Jack se u kuchyňského stolu hned zase pustil do nové námořní povídky. Jenže CALL nebyl literární časopis

a redakce rukopis vrátila. Jack si v té době zaznamenal výdaje třicet centů za poštovní známky a obálky, dá se tedy usuzovat, že psal dál a že dál posílal rukopisy různým redakcím.

Dovedl s penězi hospodařit, jako už ve čtrnácti letech, kdy pracoval v konzervárně a vedl si záznamy „Peněžní příjmy a vydání“, a rodině se mohlo dařit dost slušně, kdyby nemusel mzdu odevzdávat Floře. Podle svědectví Thomase E. Hilla z Oaklandu, který zároveň s Londonovými měl u své sestry pronajatý byt, zůstala Flora dva měsíce dlužna činži a Hillova sestra byla nucena Londonovy požádat, aby se vystěhovali.

V továrně na sprádkání konopí Jackovi původně slíbili, že mu zvýší mzdu na dolar pětadvacet centů denně, ale když tam pracoval už kolik měsíců, odmítli slib splnit. Jack dal výpověď. Přesvědčil se, že při manuální práci vždycky bude mít vysoko do žlabu, že si nikdy nevydělá víc než deset centů za hodinu, a proto se rozhodl, že se vyučí nějaké živnosti. Novému objevu zvanému elektřina kynula velká budoucnost, a tak si Jack umínil, že se vyučí na elektrotechnika. Vypravil se do elektrárny Oaklandské pouliční dráhy a řekl tamnímu správci, že se nebojí těžké práce a je ochoten začít od pšky. Správce mu dal zaměstnání ve sklepě, kde Jack za třicet dolarů měsíčně lopatou házel uhlí a měl volno pouze jediný den v měsíci.

Přihazoval uhlí topičům, kteří je nakládali do pecí. Musel je přihazovat denní i noční šichtě, takže ačkoli pracoval bez polední přestávky na oběd, málokdy mu práce skončila dříve než v devět večer — měl třináctihodinovou pracovní dobu denně. Nevydělal si za hodinu ani osm centů, a měl tedy ještě nižší mzdu, než když jak čtrnáctiletý pracoval v konzervárně. Zmáčený potem v příšerném horku v kotelně nakládal uhlí na železný trakař, vozil je k váze, kde je zvážil, dopravil celý náklad do kotelny a vyklopil jej na desky před pecemi. Když navozil uhlí víc, než ho denní topiči potřebovali, musel v noci uhlí házet výš a výš na hromadu a podepřít ji těžkými fošnami.

Znovu z něho bylo tažné hovado. Když se úplně za temna dostal domů, byl tak vyčerpán, že ani nemohl jít — jen se umyl a převalil na postel. Neměl čas ani energii přečíst si nějakou knihu nebo jít na schůzku s milou dívkou, vůbec aspoň trochu užít života, protože ani v neděli neměl volno. Zhubl a jako v mátohách se neustále potácel v příšerné

mlze uhelného prachu a horké páry. Znovu nedovedl pochopit, proč je mu ta práce takovou trýzní — vždyť kdysi dovedl zvládnout těžší úkoly mezi staršími a silnějšími muži, než byl sám. Jeden topič se nad ním slitoval a řekl mu, že dříve přiřazovali uhlí k pecím dva muži, jeden při denní směně a druhý při noční. Když nastoupil místo Jack, mladý a dychtivý něčemu se naučit, správce elektrárny oba dřívější přiřazovače vyhodil a Jackovi uložil práci pro dva. Na Jackovu otázku, proč mu tohle nikdo neřekl dříve, topič odpověděl, že jim správce vyhrožoval výpovědí, jestli to někdo prozradí.

Za několik dní tentýž topič ukázal Jackovi článek v oaklandských novinách, kde stálo, že jeden z propuštěných přiřazovačů, ženatý muž s třemi dětmi (jehož místo Jack nyní zastával), spáchal sebevraždu, protože nemohl sehnat žádné zaměstnání. A tu Jack praštil lopatou.

Ta nehorázná dřina mu nadobro zošklivila manuální práci. Dospěl k názoru, že člověk může být buď otrok, nebo tulák, že zřejmě neexistuje žádná střední cesta. Byl mladý a silný a měl rád život. Touhu po divokém dobrodružství měl v krvi. Není tedy lepší vydovádět se na toulkách po světě, než nechat si své pěkné mladé tělo lámat v kole ziskuchtivých krkounů?

Když dospěl k tomuto závěru — v dubnu roku 1894 — nezaměstnanost ve Spojených státech nabyla úžasných rozměrů. V Massillonu ve státě Ohio, Flořině rodišti, organizoval muž jménem Coxey armádu nezaměstnaných, která se měla vydat na pochod do Washingtonu s požadavkem, aby Kongres dal natisknout zeleňáků (jak se říkalo papírovým státovkám) v hodnotě pěti miliónů dolarů a nechal za ně stavět silnice, aby byla práce pro nezaměstnané. V novinách se tolik psalo o Coxeyho Armádě obecného prospěchu, že se v celé řadě amerických velkoměst samočinně organizovaly oddíly mužů. V Oaklandu muž jménem Kelly zařazoval nezaměstnané do vojenských rot a ujednal s železničními společnostmi, že je budou zdarma dopravovat v nákladních vagónech.

Sotva se Jack dověděl o rotách generála Kellyho, ihned se chopil příležitosti — přihlásil se do jeho Armády, která se měla vydat na pochod do Washingtonu. Bylo to dobrodružství, kterému nemohl odolat. Že tím ohrozí živobytí

Flory a Johna Londona, kteří zoufale potřebovali jeho mzdu, toho se nezalekl, stejně jako se toho nezalekl tehdy, když zanechal práce v konzervárně a rozhodl se pro nebezpečný způsob života a pochybný zisk z pirátského lovu ústřic. Ani Flora Wellmanová, ani profesor Chaney se nikdy nenechali spoutat kázní a obětavostí a nelpěli na plnění mravních závazků.

Kellyho Armáda měla odjet z Oaklandu v pátek 6. dubna. Když Jack a jeho kamarád Frank Davis toho dne odpoledne přišli na nákladové nádraží, dověděli se, že Armáda odjela už časně ráno. Jack prohlásil: „Víš co, Franku, já jsem se už dost natoulal po trati, tak se na nákladních vagónech nějak protlučeme na východ a Kellyho armádu dohoníme, uvidíš!“ Ani ne za hodinu už našel nákladní vlak připravený k odjezdu. Odtáhl posunovací dveře prázdného vagónu a vlezl za Frankem dovnitř. Pak dveře zasunul. Lokomotiva zapískala. Jack si lehl na podlahu a potmě se usmíval.

Vůbec nepřeháněl, když Franku Davisovi řekl, že se dost natoulal „po trati“ — nebylo to prvně, co cestoval po železnici jako slepý pasažér. Před třemi roky, když mu bylo patnáct, nastala v lovu na ústřice nucená přestávka a Jack se v teplém slunci povaloval na palubě své plachetnice, zakotvené u mola v Benicii, větrík mu chladil rozpálené tváře a plachetnice se kolébala na vlnách přílivu. Jack plivl do vody, aby zjistil, jak je tam prudký proud, a když viděl, že by ho zanesl málem až k řece Sacramentu, vytáhl kotvu a napnul plachtu.

Šel si zaplavat v řece a seznámil se tam s bandou kluků, kteří se slunili na písčitém břehu. Mluvili docela jinou řečí než jeho bývalí druhové. Byli to trampové. V porovnání s tím, co mu vyprávěli, vypadala jeho pirátská dobrodružství, jako když si děti hrají na lupiče. Jejich povídačky mu otvíraly výhledy do nového světa — do světa nárazníků a os, tendrů a „dobyčích pullmanů“, hytláků a valníků, brzdařů, posunovačů a vlakvedoucích, detektivů, vandrovnických nádeníků a tuláků z povolání. Každým jejich slovem se ho čím dál tím neodbytněji zmocňovalo kouzlo „trati“. Přidal se k jejich kurážné tlupě.

Ríkali mu „Jack námořník“. Jejich vůdce Bob si ho vzal do parády a z nádeníka a zelenáče udělal trampa. Naučili ho žebrať na ulicích. Ukázali mu, jak má okrádat opilce, „dávat bacha“ na detektivy a šlohnout pětidolarový stetson s hlavy bohatému Čínanovi z údolí Sacramenta.

Jack byl při hlučné pouliční rvačce zatčen a odseděl si tři dny v policejním vězení.

Zanedlouho mu vyložili „zákon trati“: že nikdo není opravdový tramp, dokud jako slepý pasažér neprojel přes Sierru Nevadu. Jednou v noci čekal Jack s „Frantíkem“, který se nedávno přidal k tlupě, potmě v noci na Central Pacific Overland, a když je rychlík míjel, naskočili na stupátko vagónu. „Frantík“ s něho sklouzl, padl pod kola a museli mu amputovat obě nohy.

Bob Jacka upozornil, aby se schoval na plošině mezi vagóny nebo na střeše, dokud rychlík nebude za Roseville, protože tamější policajt prý trampům „nepřeje“, a pak aby slezl na stupátko za poštovním vagónem. Ale Jack vydržel na plošině celou noc, celou cestu přes Sierru, ve sněhové vánici a v tunelech až do Truckee na druhé straně pohoří, protože se bál v jízdě přelézat vagóny rychlíku. Nikdy se k té hanbě nepřiznal tlupě, která ho po návratu do Sacramento slavnostně uvítala, pojmenovala ho Kluk z Friska a pasovala ho na ostříleného trampa.

Po několika týdnech ho to v Sacramentu omrzelo a vrátil se na nákladním vlaku do Oaklandu. A nyní po třech letech byl znovu „kamarádem větru, který se potuluje světem“.

Jack a Frank Davis vyskočili ze svého „dobyččího pullmanu“ v Sacramentu a tam se dověděli, že Armáda téhož odpoledne odjela do Ogdenu. Přichytili se na zadním vagónu rychlíku Overland Limited, a tak se svezli až do Truckee, kde je našli a vyhodili. Večer se pokoušeli dostat se na Overland, který jel na východ; Frankovi se to povedlo, ale Jack zůstal v Truckee. Chytil se tedy nákladního vlaku, a přestože bylo zima, spal tak tvrdě, že se ani neprobudil, když byl jeho vagón v Reno odsunut na slepou kolej. Zůstal celý den v Reno a pozoroval, jak se nezaměstnaní shromažďují na rozích ulic, aby se vydali za Armádou na východ. Po celé trati potkával stovky nezaměstnaných, kteří doháněli první oddíl Dělnické armády.

Záleželo mu na tom, aby dohonil Franka, proto odjel z Rena dřív, než se zorganizoval tamější oddíl, celou noc a celý den cestoval v zavřeném nákladním vagónu a ve Wadsworthu se na seřadovacím nádraží vyspal na lokomotivě až do čtyř ráno, kdy ho metaři odtamtud vymetli. Pak chytil časně ráno jiný nákladní vlak a svezl se na zadní stupačce tendru. Jiskra z lokomotivy mu zapadla do kapsy

svrchníku a najednou vzplála plamenem. Vlak ujížděl rychlostí čtyřicet mil za hodinu a bylo těžké oheň uhasit. Jack měl svrchník i kabát propálené a musel je zahodit.

Už v noci dohonal Franka ve Winnemuka. Rozhodl se, že počkají na oddíl z Rena a pojedou dál s ním, ale za chvíli tam projížděl nákladní vlak a neodolali pokušení: skočili na něj a jeli dál na východ. Za dva dny se Jack s Frankem znovu rozešli. Jack si klukovským škrabopisem poznamenal: „Cestování po trati pro Franka už ztratilo kouzlo. Romantika a dobrodružnost se mu vypařila z hlavy a zbyla jen tvrdá skutečnost a trýzeň, která se musí vydržet. Rozhodl se, že se vrátí na západ, ale já vím, že mu ty zkušenosti určitě prospěly, rozšířily mu duševní obzor a pomohly mu lépe pochopit takzvanou spodinu lidské společnosti, takže bude na tuláky jistě hodnější, až se mu jednou povede líp a náhodou se s nimi v budoucnu setká. Dnes večer se rozjždíme: on na západ a já na východ. Odtud až do Carlinu budu roztloukat uhlí na lokomotivě.“

Trampský život nejvíc Jacka lákal tím, že nebyl jednotvárný. V trampském světě se tvářnost života ustavičně kejklířsky proměňovala, děly se tam nemožné věci a v každé zatáčce se znenadání vynořilo z křoví něco neočekávaného. Každý den byl něčím pro sebe, s vlastním záznamem rychle se střídajících obrázků. V noci Jack cestoval nákladními vlaky nebo rychlíky, a když byl čas k jídlu, vydyndal si u dveří do kuchyně sem tam nějaký žvanec nebo žebrel na ulicích. Seznámil se „na trati“ se spoustou trampů a hrál s nimi ve vlaku karty o peníze nebo tabák, vařil si venku na ohni nebo si ohříval jídlo vyžebvané při hlavní trati, vyprávěl si s kamarády dobrodružné příběhy a plnil příkazy trampského povolání cestovat pokud možno na nejrychlejších vlcích.

Když ho vyhodili z vlaku na Nevadské poušti, musel jít na nejbližší železniční stanici celou noc pěšky. Bylo to brzy po Novém roce, v horách ležel vysoko sníh a fičel ošklivý ledový vítr — Jack se chlubil, že je ostřílený tulák, a tak nikdy s sebou neměl houni. Často si kolik hodin divneuběhal nohy a nikde si u kuchyňských dveří nevyžebрал ani sousto, nebo se o půlnoci octl v cizím městě bez vindry v kapse, takže musel do rána tábořit venku u trati a trást se zimou. Jindy strávil celou noc na stupačce za supějící lokomotivou a pokoušel se trochu si zdřímnout v rámusu skřípavých kol a v dešti žhavých sazí. Jednou, když to už nemohl vydržet hladem, dostal pořádný žvanec zabalený

v novinách. Odběhl na nejbližší nezastavěnou parcelu, kde to chtěl honem zhltnout.... a viděl, že to je kus nevykynutého koláče, který zbyl od předešlé večeře, protože ho nikdo z hostů nechtěl jíst. Posadil se na zem a dal se do pláče.

Právě při žebvání o jídlo se naučil vymýšlet si všelijaké, originální příběhy, poněvadž úspěch žebráka je závislý na jeho vypravěčském umění. Jakmile se před ním otevrou dveře do kuchyně, musí se na svou obět vrhnout s nějakou historkou, která by ji upoutala — a tu je třeba vystihnout povahu a temperament vyhlédnuté oběti. Jednou v Renu Jackovi přišla otevřít starší žena, která vypadala mateřsky vlídně. Jack se okamžitě proměnil v naivního výrostka, kterého stihlo neštěstí. Nemohl ani mluvit ... ještě jakživ nikoho neprosil o jídlo ... jenom nejhorší hlad, že z něho má křeče v žaludku, ho donutil, aby se odhodlal k něčemu tak ponižujícímu a zahanbujícímu, jako je žebrota. Hodná paní mu chtěla honem pomoci z rozpaků — řekla, že má jistě velký hlad, aby si tedy na chvilku sedl u ní v kuchyni, že mu dá trochu najíst — nic lepšího si tramp nemůže přát.

Jednou zaklepal v Harrisburgu v Pensylvánii na dveře u zadního vchodu, právě když si dvě staré panny sedaly k snídani. Pozvaly ho do jídelny a pohostily ho topinkami s máslem a vejci na měkko v kalíškách. Jakživ se tvář v tvář nesetkaly s nikým, kdo žil tak dobrodružně, celý život dřepěl na jednom fleku, jak by se to řeklo v trampské hantýrce. Jack měl hlad, celou noc načerno projel na nákladním vlaku. Služebná mu neustále nosila čerstvě vařená vejce, pořád čerstvé topinky a šálky kávy, a on zatím častoval dámy hrůzostrašnými příběhy, jimiž do jejich úzce ohraničeného a levandulí provoněného prostředí vnesl svěží ovzduší širošího světa načichlé ostrým pachem potu, existenčního boje a nebezpečí. Na tu snídani Jack jakživ nezapomněl a dá se předpokládat, že ty dvě staré panny jakživ nezapomněly na jeho vybájené historky, při nichž jim hrůzou vstávaly vlasy na hlavě.

Když šlo do tuhého, když dveře maloměstských obydlí zůstávaly před ním zamčené, když mu v panském domě na kopci odmítli dát najíst a nemohl to hladu už vydržet, chodil do chudinské čtvrti města, k chatrťm s rozbitým oknem ucpaným hadry, kde mu otevřela usouzená máma, udřená prací. Tam vždycky dostal něco k jídlu, protože chudí mu nikdy neodepřeli nic z toho, co tak nutně potřebovali pro sebe. Po těchto zkušenostech Jack v pozdějších

dobách říkal, že kost hrozená psu není dobrodiní — dobročinnost je rozdělit se o tu kost se psem, když je člověk zrovna tak hladový jako pes.

Nejraději měl Jack napínavá a nebezpečná utkání s posádkami vlaků, protože se i „na trati“ chtěl osvědčit jako nejskvělejší tramp, jako král trampů. Třeba se v noci rozběhl před rychlíkem Overland, než vyjel z nádraží, a skočil na stupátko prvního vagónu. Posádka vlaku ho zmerčí. Vlak zastaví, Jack seskočí a zas potmě běží napřed. Brzdař zůstane stát na stupačce, ale z té není přístup do vlaku, takže musí seskočit a dostat se na stupátko posledního vagónu, než se vlak rozjede příliš rychle. Jack je zatím tak daleko vpředu, že než ho vlak dohoní, brzdař se stupátka seskočil, a Jack tedy může zas naskočit a nic mu nehrozí — nic, ledaže by uklouzl a zahynul pod koly. Myslí si, že je pěkně v bezpečí, ale za chvíli ho načapá zas jiný brzdař, který do té doby jel na lokomotivě. Jack honem seskočí a zas utíká napřed. Když ho tentokrát vlak dohoní, stojí brzdař na stupátku prvního vagónu, Jack tedy naskočí na druhý vagón. Brzdař seskočí s prvního vagónu a honem vyskočí na druhý. Jack seskočí na opačné straně a žene se k prvnímu vagónu. Brzdař běží za ním, ale vlak zrychluje jízdu a brzdař už nemůže naskočit na stupátko. Zase Jack myslí, že je pěkně v suchu — a tu na něho topič pustí proud páry — vlak zastaví — Jack potmě utíká napřed....

Je ohromně pyšný, že kvůli němu, chudáku trampovi, čtyřikrát zastavil Overland s tolika vagóny a pasažéry, s dopravovanou poštou a s parní lokomotivou o síle dvou tisíc koní. Honička takhle trvá celou noc. Aby Jack unikl svým neúnavným pronásledovatelům, skočí na nárazníky mezi dvěma vagóny, sveze se na podvozek a jede dál na osách. To už na něho číhá strojvůdce, průvodčí, topič a dva brzdaři, ale pro osmnáctiletého mladíka, který se pyšní, že ve svém povolání vyniká, je honička tím zábavnější, čím hůř by na to doplatil, kdyby prohrál.

Troufal si neuvěřitelně nebezpečné kousky, seskakoval z rychlíků rozjetých naplno: jednou proletěl vzduchem takovou rychlostí, že porazil a omráčil městského strážníka, který stál na rohu ulice a díval se na projíždějící vlak. Jack jezdil na osách i po takových zlých tratích, kde se vědělo, že brzdaři nechávají železný těžký svorník spuštěný na kusu lana z přední plošiny vagónu, pod nímž tramp jede na osách, aby se svorník odrážel od kolejnic a utloukl trampa k smrti.

Jack se nebál ničeho — čím větší nebezpečí, tím větší legrace. Což nebyl viking, který v burácivém jihozápadním větru překřížoval v nekrytém člunu sanfranciský záliv?

Když ho v horách ve sněhové vánici vyhnali ze zavřeného nákladního vagónu a brzdař na něm vymáhal pokutu, Jack mu dal prstýnek od Lízy Connellové. Když byly noci už příliš studené, zalezl si ve výtopně do kabinky na lokomotivě, kde přespal, a kolikrát přenocoval v příšerném horku nad kotlem v elektrárně. Odpoledne chodil číst do městské knihovny a v noci se vždycky pokoušel vniknout do zavazadlového vozu rychlíku. S velkým gustem píše: „Umínil jsem si, že se povezu rychlíkem celou noc, a když mě posádka vlaku honila, svezl jsem se kus na stupačce zavazadlového vozu, na tendru, na předním rámu lokomotivy, na stupátkách, na plošinách nebo náraznících mezi vagóny.“ V noci bylo zima a ve dne zase horko, takže se mu kůže na obličej začínala loupat, a sám líčí, že vypadal jako popálený ohněm.

Všechny tyto podrobnosti a tisíce jiné si pedantsky zaznamenává do zápisníku. Ve svém třiasedmdesátistránkovém deníku z „trati“ se jeví jako způsobný a milý mladík, přesto, že žil v tak drsném prostředí, že prováděl takové klukoviny a že se kamarádil s hrdlořezy. Ten deník je plný stručných povahových charakteristik mužů, s nimiž se setkal, útržků rozmluv, které zaslechl, poznámek o tom, jak se z některých těch mladíků stali trampové, slovníkových záznamů různých železničních a trampských výrazů, líčení měst a krajin a dobrodružných příhod. Ačkoli do deníku čmáral tužkou v nákladních vagónech, výtopnách, na železničních náspech a ve výčepech, je to literární dílko, lyrické a okouzlující, které svým přirozeným a plynulým slohem prozrazuje rozeného spisovatele.

Z větší části je deník robustním, radostným projevem bujného mládí zamilovaného do všech překvapivě nových, čarovných životních jevů — ale pisatel se někdy neudrží na tak vypjaté emoční úrovni, nemůže věčně jen jásat. Místy je najednou znát, že mu vypovídají nervy, že ho přepadá sklíčenost: v deníku se vyskytne nadrápaná úvaha o tom, že člověk má právo na sebevraždu, — připomíná noc před čtyřmi roky, kdy Jack v Benicii spadl s mola a řekl si, že utonutí je smrt hodná hrdiny. Život ho nejvíc těšil tehdy, když mu hrozil smrtelným nebezpečím.

Jednou se na hřebeni Skalistých hor dostal do prudké

sněhové bouře a byl by na nekrytém stupátku vagónu málem zmrzl, ale hodný brzdař mu řekl, že vedle stojí na koleji vlak s oddílem Kellyho Armády z Rena. Jack vlezl do zavřeného nákladního vagónu, kde na podlaze vystlané slámou leželo čtyřiaosmdesát mužů, natlačení k sobě, aby se zahřáli. Na slámě nebylo ani kousíček volného místa, kam by mohl stoupnout, šlapal tedy po mužích, kteří se ho ihned chopili a začali jím prudce pohazovat z jednoho konce vagónu na druhý, až si konečně našel volné místo na slámě. A takto byl přijat do Dělnické armády.

Byla to veselá cháska: někteří z nezaměstnaných doopravdy věřili, že jim Kongres opatří práci, jiní byli trampové a jen využili příležitosti, aby se kus cesty svezli, nebo to zas byli mladíci jako Jack, kteří se vydali za dobrodružstvím. Při jízdě sněhovou vánicí uspořádali jakousi šeherezádu: každý z osmdesáti čtyř mužů musel vyprávět nějakou povedenou historku. Když se mu nepovedla, začali si ho přehazovat z jednoho konce vagónu na druhý. Jack píše, že jakživ předtím nezažil takové báječné vypravěčské orgie.

Čtyřiaadvacet hodin projížděl oddíl z Rena sněhovou bouří, zavřený v nákladním vagóně a bez kouska jídla. Když konečně vjeli na nebraskou rovinu, uspořádali peněžní sbírku a poslali telegram úřadům v Grand Islandu, kde měli projíždět v poledne, že přijede pětaosmdesát zdravých hladových mužů, kteří by rádi dostali něco k jídlu. Nákladní vlak zastavil v Grand Islandu a tam byl oddíl přivítán policií a zvláštními uvítacími výbory, v jejichž doprovodu odpochoval do hotelů a restaurací, kde muže nakrmili, a pak zase vyprovodili zpátky k vlaku, který na ně musel počkat.

Když v jednu hodinu po půlnoci přijeli do Omahy, čekala tam na ně zvláštní policejní četa, která je střežila, dokud nebyli převezeni přes řeku do Council Bluffs. Když pak museli v prudkém lijáku pochodovat pět mil do parku Chautauqua, kde tábořila Kellyho Armáda, Jack a jeho nový kamarád, Švéd, strojník vysoký šest stop s vlasy světlými jako konopí, proklouzli policejním kordónem, aby se někde mohli schovat před deštěm. Nalezli jakýsi výčep na těžkých dřevěných kládách, kde Jack strávil nejbědnější noc ve svém životě. Stavení trčelo podepřené zespodu na kládách, aby se mohlo stěhovat z místa na místo, a ve stěnách byla spousta skulin, kudy fičel dovnitř vítr. Jack promoklý na kůži se svalil pod nálevní pult, třásl se tam celou noc zimou

a modlil se, aby už bylo ráno. V pět hodin, promrzlý a polomrtvý, naskočil na nákladní vlak, vrátil se do Omahy a vyžebbral si snídani. Prohlédl si město a pak se vydal do Kellyho tábora, ale před mostem ho zastavili — chtěli na něm mostné. Někdo se nad ním smíloval a dal mu pětadvacet centů, aby se mohl svézt do parku Chautauqua. Když tam přišel, hlásil se generálovi Kellymu a ten ho přikázal k zadnímu voji.

Železniční společnosti, které udržovaly provoz na dráze mezi Omahou a Chicagem, stavěly se vůči Armádě nepřátelsky a bály se povolit jí zdarma průjezd v zavřeném železničním vagóně, aby tak nevznikl precedenční případ. Ve vlcích měly plno Pinkertonových detektivů, aby příslušníkům Kellyho Armády zabránili přístup do vagónů. Dva dny a dvě noci tábořil Jack s Armádou u železniční trati v ostrém větru, v krupobití a dešti. Potom dvě dívky z Council Bluffs navedly jednoho chlapce, aby svému otci ukradl lokomotivu, a výbor příznivců v Omaze sestavil vlak ze zavřených nákladních vozů. Ale když přijel k místu, kde Kellyho Armáda tábořila, ukázalo se, že se do něho celá nevejde, a vlak byl s politováním vrácen.

Po četných bezúspěšných potyčkách se generál Kelly rozhodl, že se s Armádou vydá pěšky do Washingtonu, kde se spojí s generálem Coxeyem. Armáda vyrazila na pochod s dvanácti vozy naloženými jídlem a vším, čeho bylo zapotřebí k táboření, které jí darovali obyvatelé Omahy a Council Bluffu, a vypadala věru impozantně s prapory a transparenty a v čele s generálem Kellym na krásném vraníku, věnovaném jedním nadšencem z Council Bluffu. Jack měl za dva dny prodřené podešve a šel jen v ponožkách. Obrátil se na zásobovací oddíl, ale řekli mu, že pro něho boty nemají. Šel tedy z protestu bos a nazítří měl na chodidlech už tolik puchýřů, že nemohl dál... a ihned od zásobovacího oddílu dostal boty.

Ve státě Iowa se chovali přátelsky a pohostinně: když Armáda přijela někam do města, přivítalo ji ve špalírech obecenstvo s prapory a transparenty. Sotva se utábořila, shromáždily se kolem davy, zpívaly se společně písně, pronášely se politické projevy a uspořádal se baseballový zápas mezi místní devítkou a baseballovým mužstvem Armády. Jack ve svém deníku píše, že dámské hlasy lahodně kontrastovaly s ochraptělými hlasy zpívajících nasydlých kamarádů. Pyšně si také zaznamenal, že se všichni o Armádě

vyslovovali velmi uznale a kamarádi mnohé příjemně překvapili pěknými způsoby a slušným zevnějškem.

Pořád se ještě nedovedl podřídit kázni, byla mu nesnesitelná a toužil dokonale poznat kraje, kudy projížděli, proto každý večer proklouzl mezi armádními strážemi, aby si prohlédl neznámé město. Znovu se mu udělaly puchýře na chodidlech, a tak si umínil, že se bude vozit na nákladních vlacích, jenže velitelé místní policie, která chtěla Armádu honem dostat z města, vždycky se jí postarali o vagóny pro ty, kdo nebyli schopni pochodovat pěšky. Ale k Des Moines se v nich mohli svést jenom na poslední stanici před městem a Jack se zapřísáhl, že se raději dá zavřít, než by ještě krok popošel na rozbolavělých nohou. Proto se na stanici dovolával soucitu dobrých lidí a vyprosil si peníze na jízdenku.

Když Armáda připochodovala do Des Moines, nařfkali si muži na bolavé nohy a nechtěli už jít dál pěšky. Město nemělo ubytování pro dva tisíce mužů na pochodu, a tak je utábořilo v opuštěné továrně na kamna a krmilo je třikrát denně, zatímco se úřady pokoušely přemluvit železniční správu, aby je svezla alespoň na příští stanici. Železniční správa to odmítla. Jack zatím odpočíval, hrál baseball a zotavoval se spánkem a vydatným jídlem. Potom úřady uspořádaly v městě sbírku a Armáda si vyrobila vory, aby se dostala dál po řece Des Moines.

Námořník Jack a ještě devět mužů z jeho rot, o nichž píše, že to byli samí pašáci, vybrali si dobrý člun a pustili se v něm po řece na vlastní vrub. Vždycky předhonili Armádu o půl dne až o den. Když se přiblížili k nějakému městečku, vztyčili americkou vlajku, prohlásili se za předvoj a vyptali se, jaké zásoby jsou tam pro Armádu připraveny. Když jim je farmáři přivezli, vybrali si Jack s kamarády to nejlepší: tabák, mléko, máslo, cukr a konzervy. Nebyli úplně nemilosrdní, nechali tam pro Armádu pytle fazolí a mouky a hovězí maso z porážky, ale Jack píše, že si žili blahobytně. Opovrhli dokonce kávou vařenou ve vodě — vařili si ji v mléce. Jack uznává, že se v tom ohledu nezachovali vůči Armádě pěkně, ale vždyť byli individualisti, iniciativní a podnikaví, byli hluboce přesvědčeni, že na jídlo má právo ten, kdo se ho zmocní první.

Generál Kelly zuřil. Poslal lehký veslovací člun, aby „předvoj“ zadržel, a když se to nepodařilo, vyslal dva muže na koních, aby po celém kraji lidem dávali výstrahu. Pak

se Jack a jeho kamarádi „setkávali s ledovým přijetím“ a byli nuceni připojit se k Armádě. V městě Quincy ve státě Illinois, o němž se Jack dověděl, že to je nejbohatší malé město ve Spojených státech, žebrol celý den na ulicích a přinesl si tolik spodního prádla, ponožek, bot, košil, klobouků a obleků, že mohl obléci půl roty. V Quincy lidem napovídal spoustu všelijakých historek a každá byla povedená. Když je začal psát pro časopisy, litoval, že tehdy tolik plýtvá svou plodnou fantazií.

Ale tím dny hojnosti pro Armádu skončily. Šestatřicet hodin nedostali od farmářů vůbec žádné potraviny zdarma. Slunce začalo pálit, nastávalo jaro, ve vzduchu bylo plno opojných vůní od Dělnické armády utíkali zběhové v tlupách a celých četách. Jack si zapsal do deníku: „Ráno hodlám zběhnout, nemohu hladu vydržet.“ Všech jeho devět kamarádů z čunu zběhlo s ním. Generál Kelly pocho- doval dál a s hrstkou mužů nakonec dorazil do Washingtonu, ale tam se dověděl, že generál Coxey sedí ve vězení. Coxey, který předhlonil dobu o několik vládních období tím, že požadoval celostátní plán, jak opatřit práci pro nezaměstnané, byl policií zatčen proto, že na Kapitolu pošlapal trávu!

Jack odjel rychlíkem Cannonball do Jacksonvillu, od- tamtud osobním vlakem do Mason City, tam naskočil na nákladní vlak, projel na něm celou noc a konečně se dostal do Chicaga. Čekala ho tam pošta z domova a v dopise od Elizy našel pět dolarových bankovek. Vypátral čtvrt s krámky vetešníků a koupil si boty, klobouk, spodky, košili a svrchník. Večer byl v divadle, prohlížel si město a za pat- náct centů se vyspal v noclehárně, poprvé v posteli od té doby, co se vypravil z Oaklandu. Druhý den se nechal přes Michiganské jezero převézt do městečka St. Joseph, kde s manželem a dětmi žili Flořina sestra Mary Everhardová. Jack si u ní odpočíval v pohodlí kolik týdnů, popsal hodně stránek v deníku, vynahrazoval si dobrým jídlem nedostatek, jímž tak dlouho strádal, rád se nechal tetou Mary rozmaz- lovat, vypomáhal trochu v hospodářství a vyprávěl Ever- hardovým napínavé příběhy „z trati“.

Teprve v plném létě odjel jako slepý pasažér do New Yorku. Dopoledne obyčejně žebrol na ulicích o jídlo a odpoledne vysedával v parčíku u Radnice, kde nebylo tak dusno a parno jako v ulicích. Za pár centů si kupoval knižní novinky s poškozenou vazbou, četl je vleže na chladivé trávě a z lahví po jednom penny popíjel chlazené mléko

Jednou odpoledne se přidal k hloučku lidí, kteří se dívali na kluky, jak hrají kuličky. Najednou jeden kluk vykřikl „Pozor, poldové!“ a lidé se honem rozešli. Jack se s knihou v podpaždí loudal z parčíku a tu viděl, že se k němu blíží strážník. Jack si ho nevšímal. Strážník mu dal obuškem po hlavě a srazil ho na zem. Jackovi se točila hlava a dělalo se mu špatně, ale jakžtakž se znovu postavil na nohy a utekl, protože kdyby nebyl utekl, byl by si určitě odseděl třicet dní na Blackwallově ostrově za to, že strážníkovi kladl odpor.

Za dva dny se v zavřeném nákladním vagóně vydal k Niagarským vodopádům. Podívaná ho tak uchvátila, že u nich bez jídla vydržel celé odpoledne. Ještě o jedenácté v noci se díval na temné spousty vody v záři měsíce. Pak se pustil za město, přešel plot a vyspal se na louce. Probudil se v pět ráno a vrátil se k vodopádům. Když procházel spícím městem, uviděl jít proti sobě tři muže. Ti dva po stranách byli trampové a mezi nimi šel policajt, který se Jacka zeptal, v kterém hotelu přenocoval. Když si Jack nemohl vyvzpomenout název hotelu, strážník ho zatkl pro potulku a dal ho zavřít ve vězení u Niagarských vodopádů. Ráno Jacka s šesti jinými zatčenými předvedli k policejnímu soudu. Soudce si sám dělal zapisovatele, vyvolával tuláky jménem a bez dlouhých řečí každého odsoudil na třicet dní k těžké práci.

Jack dostal na ruce železka s kruhy, jimiž byl provlečen řetěz, a tím ho připoutali k obrovskému černochovi, pak všechny odsouzence po osmi dvojicích spoutali dohromady a vedli je ulicemi na nádraží. Jack se ve vlaku rozdělil o tabák s mužem, který byl zezadu s ním spoután, odseděl si tresty už v kolika vězeních a věděl co a jak. Rychle se spolu spřátelili. Odvezli je do káznice pro obvod Erie, kde Jackovi oholili hlavu a oblékli pruhovaný trestanecký oděv. Nazítří ho časně ráno zařadili do pracovní čety a odvedli do přístavu vykládat náklad z lodí.

Tam Jack těžce pracoval jen o chlebě a vodě — maso dostávali jednou týdně, ale úplně vyvařené — až ho po dvou dnech vysvobodil muž, s kterým se spřátelil ve vlaku. Našel mezi vězeňskými dozorci kamarády, bývalé vězně, kteří ho doporučili na místo chodbaře, a on se pak postaral, že Jack také dostal zaměstnání jako chodbař. Měl za povinnost nosit vězňům chléb a vodu a dozírat na ně, aby se řádně chovali. Jack vyměňoval zbylé skývy chleba za knihy

a tabák nebo za šle a zavírací špendlíky, a za ty od vězňů odsouzených k delšímu trestu kupoval maso.

Jakmile se stal chodbařem, začal si všimnat všeho, co se ve vězení dělo. Viděl, jak věžňové dostávali záchvaty zuření a šílenství, jak je mrskali bičem a honili čtyři patra po schodech dolů, jak je někdy utloukli k smrti, jak v mučírňách nepopsatelně hrůzně trýznili bezmocné oběti. Sprátelil se s ostatními chodbaři, s dozorci a s vězni odsouzenými ke kratším i delším trestům; poznal stovky mužů, vyslechl jejich životní osudy, zaznamenával si výrazy z jejich nářečí, pochopil jejich filosofii a vnikal do prostředí, z něhož pocházeli. Pořád zůstával zadobře s kamarádem z vlaku, aby se udržel v zaměstnání chodbaře. Strávili spolu spoustu hodin jako nejlepší přátelé a dělali si plány, jak spolu budou loupit, až se dostanou na svobodu.

Po třiceti dnech byli oba propuštěni, na hlavní třídě v Buffalu si vyžebrali pár centů a šli spolu na pivo do jednoho výčepu. Jack ani nedopil korbel zpěněného piva, vymluvil se kamarádovi, odešel zadním vchodem na dvůr, přeskočil plot a utíkal celou cestu až k nádraží. Za pár minut se už na nákladním vlaku vezl na západ.

Trvalo mu kolik měsíců, než se po kanadských železnicích protloukl tři tisíce mil až do San Franciska. Kolikrát se zachránil před uvězněním jen tím, že dovedl rozmanitými povídkami přesvědčit policii, že není žádný tulák. Často býval o hladu, protože neuměl francouzsky a kanadští venkované měli strach z trampů. Celé noci kolikrát projel polozmrzlý v nákladních vagónech, takže ráno ani nebyl schopen vylézt ven a vyžebrot si něco k jídlu. Ale taková dobrodružství ho bavila, obzvláště tehdy, když jel tisíc mil v témže uhláku: pokaždé, když vlak zastavil, vyžebrot si v městě jídlo, vrátil se s ním do uhláku, tam si je snědl a přitom se díval na kanadskou krajinu, jíž projížděl. Konečně přijel do Vancouveru, přihlásil se jako námořník na loď *UMATELU* a tak se dostal zpátky do San Franciska.

III

Ať člověk v Jackových zápiscích pátrá jak chce, nikde se z nich nedozví, zda měl socialistické názory, nebo že se přiznával k socialistickému smýšlení před rokem, jež strávil mezi takzvanou „spodinou lidské společnosti“. Až do té doby Jack byl bezohledný individualista, jak se později sám charakterizuje: tak bezohledný, že své druhy z Kellyho Armády okrádal o jídlo s devíti kamarády, s nimiž si zabavil nejrychlejší člun, poněvadž „byli muži podnikaví a hluboce přesvědčení, že na jídlo má právo ten, kdo se ho zmocní první“; tak bezohledný, že jako chodbař v káznici nerozdal přebytečné skývy chleba nešťastným vězňům, ale prodával jim je za tabák, knihy a maso. Měl znamenité zdraví, tvrdé svaly a žaludek, jenž by byl strávil železné piliny; byl mladý, měl radost ze života a dovedl se osvědčit v práci i ve rvačce. Představoval si, že mu je všechno dovoleno a že si může všeho dobyt vlastní nadřazeností a silou. Byl pyšný, že patří k silákům, od přírody vyvoleným, aby měli nad ostatními vrch.

Ale když zjistil, odkud se „spodina lidské společnosti“ rekrutuje, změnil své smýšlení. Než se vydal „na trať“, představoval si, že trampové se dávají na tulácký život z vlastní vůle, protože dychtí poznat svět a prožívat dobrodružství svobodně a nezodpovědně, nebo protože to jsou povaleči, ztřeštění blázni, tulpasové nebo pijáci. Uvědomoval si, že někteří z nich by beztak nebyli k ničemu v jakémkoli hospodářském řádu, ale brzy se přesvědčil, že většinou to kdysi byli schopní lidé, třebaže jsou takoví divoši jako on: námořníci a nádeníci, pokřivení a vykolejení dřinou, strádáním nebo nějakým nešťastným úrazem a pak vyřazení jako opotřebovaný kůň, takže se octli na dlažbě jako tuláci, kteří nemají ani čím se přikrýt, ani zásobní košili, ani co jíst. Když se s nimi toulal po městech a dobýval do zadních vchodů ke kuchyni nebo se s nimi třásl zimou v nákladních vagónech a v parcích, vyslechl od nich vyprávění o životních údělech, které zpočátku vypadaly stejně nadějně jako ten jeho, ale nakonec jim bylo souzeno klesnout až na dno společenské propasti.

Byli to muži zranění a zmrzačení u strojů, u nichž praco-

vali bez jakékoli ochrany proti úrazu, a páni zaměstnavatelé je pak vyhodili; muži, kteří se rozstouli z dřiny v nevětraných továrnách, kde měli čtrnáctihodinovou pracovní dobu denně, a pak byli propuštěni jako nepotřební; muži, kteří v takovém zápřahu zestárlí a byli donuceni udělat místo mladším a silnějším. Byli to muži zaměstnaní v průmyslových odvětvích časem zastaralých a zlikvidovaných, kteří nemohli nalézt nějaké nové nebo se mu nedovedli přizpůsobit, kteří byli nahrazeni stroji nebo ženami a dětmi za nižší mzdu, muži, které připravila o práci hospodářská krize a kteří pak už nenašli vůbec žádné zaměstnání. Byli to muži nedostatečně vyučení, aby dovedli zacházet s novým technickým zařízením; vandrovní nádeníci, jejichž druh práce už byl příčinou, že se na třetinu až polovinu roku bez vlastní viny ocitají bez zaměstnání; nevykonní, podřadní, znechucení tovární dělníci, kteří se neosvědčili v nekontrolovaném konkurenčním boji a kterým byl milejší tulácký život nežli žití v brlohách chudiny.

Jack pochopil, že za pět, deset, dvacet let i on bude nahrazen někým mladším a silnějším a skončí někde v brlohu městské chudiny nebo v brlohu tuláka. Poučil se o dvou věcech: předně, že se musí vzdělávat, aby mohl pracovat mozkiem místo snadno nahraditelnýma rukama; a za druhé, že určitě není něco v pořádku v ekonomickém systému, který připraví člověka o nejlepší leta jeho pracovní schopnosti a pak ho někde na smetišti nechá hnit a umírat hladem. Jack si uvědomil, že to znamená nejen tragédii pro jednotlivce a jeho rodinu, ale i tragické plýtvání lidským materiálem, a musí to vést jen k zesurování lidské společnosti.

Když se vrátil do Oaklandu, byl si už vědom toho, že změnil své smýšlení a své životní názory, že nyní věří v něco nového. Ještě mu však nebylo jasné, co to je. Protože zdědil mozek po profesorovi Chaneym, uchýlil se ke knihám, aby to vypátral. Od dělníků a tuláků, které poznal „na trati“ a z nichž někteří byli vzdělaní a vyškolení, se hodně dověděl o dělnických odborech, o socialismu a dělnické solidaritě, a to mu ukázalo směr, jímž má pátrat.

A tak se dověděl, že novodobý socialismus se zrodil teprve před nějakými sedmdesáti lety, tedy jen o několik let dříve než jeho matka, a měl pocit, že je pro něho úžasné štěstí žít právě na počátku toho hnutí, že se může téměř pokládat za jeho zakládajícího člena. Ten objev měl pro něho tím větší přitažlivost, právě že byl tak časový. Dalším objevem

bylo poznání, že ekonomické poměry, a nikoli lidé vyvolávají revoluce. Matka moderního socialismu, Francie, se vzbouřila proti mravně zkažené monarchii, která pro společnost znamenala jen břemeno, ale najednou pocítila, že si uvázala na krk buržoazii, která je stejně jen břemenem. Zavedení strojové výroby způsobilo prodloužení pracovního dne, snížení mezd a cyklickou nezaměstnanost, takže dělnické masy žijí v horších poměrech než v době marnotratných Ludvíků, Čtrnáctého a Patnáctého. Jack pochopil, že je zapotřebí další revoluce, tentokrát spíš ekonomické než politické, a že toto poznání utopické socialisty přivedlo k socialismu: uvědomili si, že několik jedinců hýří bohatstvím, kdežto většina lidí, kteří se bez ustání dřou, žije v chudobě.

Začtl se do spisů Babeufa, Saint-Simona, Fouriera a Proudhona, v nichž našel první přímé útoky na soukromé vlastnictví; první rozlišení společenských tříd na ekonomickém základě; tezi, že soukromé vlastnictví je založeno na práci lidských mas; požadavek, aby bezprašné zisky byly zlikvidovány a stejně i dědické právo na majetek; a revoluční názor, že provést sociální reformu je povinnost vlády. Jack si v papírnictví koupil za pět centů zápisník v hnědých papírových deskách a necvičenou škrabaninou si v něm zaznamenal cíle průkopníků, kteří se pokoušeli vymyslet moderní průmyslový systém, v němž by nikdo nežil z práce svých bližních, v němž by musel pracovat každý člověk a práce by byla zajištěna všem. Zapsal si tam, že ti muži sice připravili půdu pro revoluci, ale nebyli schopni vynalézt prostředky, jimiž by se revoluce uvedla v pohyb, aby se uskutečnilo socialistické státní zřízení; spokojovali se nadějí, že páni dají dělníkům socialistické zákony z křesťanské lásky a dobré vůle.

Jeden tulák-filosof „na trati“ pověděl Jackovi o brožurě s názvem „Komunistický manifest“. Jack si ji koupil, dychtivě si ji přečetl a bylo mu, jako by mu mluvila ze srdce a jako by vyjadřovala jeho vlastní neujasněné myšlenky. Bezpodmínečně kapituloval před argumentací Karla Marxe, protože u něho našel metodu, jíž lze nejen uskutečnit socialistické státní zřízení, ale jíž lze lidstvo přimět, aby uznalo historickou nutnost socialismu jakožto ekonomického systému. Jack si ve svém zápisníku zaznamenal: „Veškeré dějiny lidstva odevždy jsou dějinami zápolení mezi vykořisťovateli a vykořisťovanými; dějiny těchto třídních bojů

jsou právě tak dokladem ekonomického vývoje civilizované společnosti, jako jsou Darwinovy studie dokladem vývoje člověka z nižších druhů; zavedením industrializace a koncentrací kapitálu se dospělo k vývojovému stadiu, kdy se vykořisťování nemohou vymanit zpod útisku vládnoucí třídy jinak, než když celé lidské společenství jednou a pro vždy vykořisťování zlikviduje.“

Jak se Jack dál prokousával „Komunistickým manifestem“, poučil se, že vědecký socialismus požaduje zrušení soukromého vlastnictví půdy; zrušení veškerých dědických práv; že požaduje, aby továrny, výrobní prostředky, spoje a doprava přešly do vlastnictví státu, aby veškerý majetek kromě spotřebního zboží se stal kolektivním vlastnictvím. Tlustě si tužkou v „Manifestu“ podtrhl výzvu ke všem proletářům na světě: „Komunisté pokládají za nedůstojné, aby tajili své názory a úmysly. Prohlašují otevřeně, že jejich cílů lze dosáhnout jen násilným svržením dosavadního společenského řádu. Nechtě se panující třídy třesou před komunistickou revolucí! Proletáři v ní nemají co ztratit, leda své okovy. Dobýt mohou celý svět. Proletáři všech zemí, spojte se!“

Zanedlouho Jack prohlašoval, že socialismus je to nejnádhernější na světě.

Jakmile se rozhodl, že se bude žít prací mozku, a nikoli prací svých rukou, dal se do díla, jemuž se toužil věnovat. Po celý rok, co žil jako tramp, vedl si záznamy v zápisníku a věděl s naprostou jistotou, že jeho život může mít smysl a on může být šťasten jen tehdy, bude-li psát příběhy, které se mu rojí v mozku. Není těžké pochopit, proč mohl v tak mladém věku dospět k tomuto rozhodnutí: tisíce horoskopů, které sepsal profesor Chaney, byly hotové povídky, čistě jen výplody jeho obraznosti. Vášně vymýšlet si napínavé příběhy a vydělávat si tím na živobytí byla tedy Jackovým pravoplatným dědictvím.

Zvolil si Kalifornskou universitu v Berkeley, kam tramvají nebylo z domova daleko, jako učiliště, kde dovrší své vzdělání. Neměl však ukončené studium na střední škole, a musel tedy ještě tři roky pilně studovat, než se mohl zapsat na universitu.

Bylo mu už devatenáct, když vstoupil do první třídy oaklandské vyšší střední školy — objevil se tam v hodně obnošeném a pomačkaném tmavomodrém obleku, který mu vůbec nepadl, ve vlněné košili bez vázanky. Byl silný,

osmahlý sluncem, vypadal drsně a světlehnědé vlasy měl rozčuchané, jako by se v nich co chvíli prohrábl prsty. Stále ještě žvýkal tabák — návyk ze života „na trati“ — umrtvoval tím bolest zubů, které měl hodně zkažené. Když mu Eliza nabídla, že mu dá vykotlané zuby zaplombovat a vytržené zuby nahradit umělými, přestane-li žvýkat tabák, ochotně její nabídku přijal. Z nových zubů měl takovou radost, že investoval peníze do kartáčku na zuby — předtím jakživ žádný nepotřeboval.

Měl nedbalé způsoby, které si navyl v dobách, kdy chodil po žebrotě, seděl ve škole opřený lokty dopředu o lavici, nohy měl natažené před sebou a ruce v kapsách, zadívaný do prázdna. Otáčel hlavu ze strany na stranu a každou chvíli se mu v obličeji mihl stín, pak se najednou vzpamatoval a tvář se mu rozjasnila úsměvem. Když ho učitel vyvolal, zřejmě s obtíží se postavil a zpola vzpřímený se oběma rukama opřel o lavici, jako by se jinak nemohl udržet na nohou. Vždycky odpovídal potichu, téměř neslyšitelně a co nejstručněji. Když domluvil, honem se zas posadil, jako by ho to úplně vyčerpalo.

Ostatním hochům a dívkám v jeho třídě bylo čtrnáct, nanejvýš patnáct let, většinou pocházeli z dobrých rodin a nikdy nebyli z domova dál než v San Francisku. Jackovi připadali jako malé děti. Stejně měl pocit, že ačkoli vzdělání otvírá bránu k lepšímu životu, jsou ty lekce francouzštiny, římských dějin a algebry úplně dětinství. Ani se nepokoušel před spolužáky tajit, že se ve škole nudí, že se tam učí samým bezvýznamným věcem a že ho zajímá jen svět dospělých lidí, o kterém oni nemají ani ponětí.

Chtěl být se svou třídou zajedno, ale nemohl. Stával opodál a naslouchal rozhovorům spolužáků, ale když na něho některý hoch nebo některá dívka promluvili, zřejmě ho to podráždilo, protože se okamžitě vzdálil. Znovu se tak projevil základní rozpor v jeho povaze, jehož si první všimla Ina Coolbrithová: byl nesmírně sebevědomý, a přitom zakřiknutý a plachý, jako by trpěl pocitem méněcennosti. Spolužákům se zdál nedůtklivý, protože často drsně odmítl jejich výzvu, aby se k nim přidružil, když chtěli něco podniknout. Bylo jim velmi zatěžko ho pochopit. Spolužačka Georgia Loring-Bamfordová o něm píše, že někdy celý zářil a vypadal dětinsky šťastně, ale jindy se zas kabonil jako pobuda z přístavu a zdálo se, že je na to pyšný. Pořád měl čepici nacpanou v kapse kabátu, po vyučování ji vytáhl,

nasadil si ji na hlavu a vyrazil ze školní budovy klátě rukama jako námořník.

Na společenský život neměl kdy, i kdyby ho studenti z oaklandské vyšší střední školy mezi sebe přijali. John London si zatím našel za stávky železničářů zaměstnání jako hlídač na nádraží, ale Jack ho pořád musel podporovat. Na sobotu a na neděli si sháněl různé práce: stříhal žacím strojem trávníky, klepal koberce a běhal po posílkách. Eliza mu ze svých skrovných příjmů opatřovala jídlo a knihy a koupila mu kolo, aby mohl jezdit do školy. Pořád měl nouzi o peníze. Když potřeboval školník v oaklandské střední škole pomocníka, podařilo se Elize získat to místo pro bratra. Jack tedy zůstal po vyučování ve škole, kde zametal třídy a drhl záchody. Po letech napsal hrdě své dceři, že kdysi myl všechna okna v budově, kam ona chodí do školy.

Jednou ho skupina dívek viděla, jak vchází do výčepu na Broadway s dvěma trampy, s kterými se znal „z trati“, a rozšířily o něm pověsti, že se stýká se surovými chlapy a zřejmě si libuje v násilnostech. Když se Jack stal pomocníkem školníka, ještě se tím prohloubila propast mezi ním a ostatními studenty.

Ale když se dověděl o jejich literárním časopise *THE AEGIS* a když mu tam uveřejnili článek o Boninských ostrovech, ihned se mu zdálo, že si školu přece jen oblíbí. Článek vyšel na pokračování v lednovém a únorovém čísle ročníku 1895 a je napsán s vervou, svěže a živě, takže i po tak dlouhé době je pořád zábavný. Líčení velrybářského loďstva a Boninských ostrovů je barvité, postavy jsou lidsky proteplené a milé a především Jackova próza má hudebnost. Když si Jack svou práci přečetl vytištěnou, poučil se o psaní líp než ze všech kritických poznámek naškrábaných v jeho slohových úlohách učitelem angličtiny, který se hrozil jeho svérázného vyjadřování, jeho bezprostřednosti, jeho záliby a rozkoše, s jakou psal o přírodě. V březnu vyšla v *THE AEGIS* Jackova povídka „Sakaicho Hona Asi a Hakadaki“ a pak ještě dvě, na námět zážitků „z trati“, s názvy „Kluk z Friska“ a „Kluk z Friska se vrací“, obě hojně prostoupené dialektem a bystrými postřehy, vystihujícími psychologii trampů „z trati“.

Železniční stávka skončila kompromisem, John London zase přišel o zaměstnání a Jack musel živit rodinu. Musel si sehnat ještě víc příležitostných prací, ještě těžších, než měl doposud. Nemohl už utrácet peníze na sebe a spolužáci

pozorovali, že je čím dál tím ošumělejší. Neustále byl podrážděný z přepracování, z nedostatečné stravy a z nevyspání. Psal upřímně o sobě, a tak se studenti dověděli, že býval námořníkem a trampem. Dívky s ním nechtěly nic mít. Skutečnost, že psal, mu nikterak nepomohla, aby se spolužáci a spolužačky smířili s jeho výstřednostmi, ale naopak ho ještě víc od nich odloučila. Těšilo ho v noci ve volném čase psát povídky, těšilo ho číst spoustu knih, které si ve veřejné knihovně vypůjčoval na čtenářské průkazy šesti členů rodiny, ale den mu skýtal pramálo, co ho mohlo obšťastnit: přátelství, láska, místo na slunci... nic z toho pro něho nebylo. Stal se tedy členem Debatního spolku Henryho Claye.

V Debatním spolku Henryho Claye se soustřeďovali oaklandští intelektuálové. Jeho členy byli mladí učitelé, lékaři, právníci, hudebníci, univerzitní studenti, socialisté — všichni, kdo měli zájem o to, co se ve světě děje. Víc než kterákoli jiná skupina v Oaklandu posuzovali člověka podle duševních schopností a méně už podle kabátu. Na jedné, dvou schůzích seděl Jack mlčky a teprve později se zúčastnil diskuse. V Debatním spolku dovedli ocenit jeho jasné, logické myšlení, bavili se jeho drsným irským humorem, jeho pestrými příběhy z cest po moři a „po trati“, považovali ho za veselého společníka, který má rád legraci. Dojímal je jeho vřelá a vášnivá zaujetí pro socialismus a obdivovali se značným vědomostem, které o socialismu už získal. Ale tehdy bylo pro Jacka nejdůležitější, že ho měli rádi, že ho mezi sebe přijali jako sobě rovného a přítele. V jejich srdečném ovzduší Jack nalézal duševní rovnováhu a zbavovat se své rozpačitosti a mrzoutství — mohl se tam pohybovat s hlavou hrdě vztyčenou, mohl se projevit plně a bez zábran. Nalezl si místo mezi svými vrstevníky.

Ze všech členů spolku si nejvíce oblíbil Edwarda Applegartha, štíhlého mladíka s kaštanovými vlasy a hnědýma očima, z kultivované anglické rodiny, která se usadila v Oaklandu. Applegarth byl bystrý, vtipný a měl schopnost pronikavého postřehu. Jack a Edward byli stejně staří a navzájem se ponoukali k pohotovému a rozumnému myšlení. Zpočátku spolu často trávili volný čas na procházkách, kdy vedli přátelské debaty. Pro Applegartha Jack nebyl špatně oblečený mladík s drsnými způsoby, který pocházel z končin za hraniční čarou konvenčně slušného prostředí: pro něho byl Jack inteligentní, scestovalý filuta —

zatím ještě je chudý, ale jistě ho čeká lepší budoucnost.

Applegarth uvedl Jacka do své rodiny a seznámil ho se svou sestrou Mabel. Sotva Jack překročil práh jejich domova, ihned se do ní zamiloval s unáhleností a bezprostředností své prudké povahy.

Mabel Applegarthová byla éterická bytost s velkýma oduševnělýma modrýma očima a se spoustou zlatých vlasů. Jack ji přirovnával k zlatému květu na tenkém stonku. Měla krásný melodický hlas a zvonivý smích, který mu zněl jako nejhlásnější hudba na světě. Mabel byla o tři roky starší než on, byla upřímná, neznala přetvářku ani kokotérii. Studovala angličtinu na Kalifornské universitě. Jack žasl, kolik vědomostí má pěkně uspořádáno ve své hezké hlavičce. Chování měla bezvadné, byla opravdu dobře vychovaná a neustále žila v ovzduší umění a kultury. Jack ji zbožňoval jako bytost, která je úplně nedotknutelná. Měl radost, že ho přijala jako sobě rovného a přítele — když by byl věděl, že ji on stejně vábí vřelým temperamentem a drsnou mužnou energií, jako ona ho vábí svou jemností.

Jack chodil často k Applegarthovým, kteří bydlili v nízkém velikém domě plném knih a obrazů. Půjčovali mu knihy a podíleli se s ním o své vědomosti a znalosti v oborech, do nichž dosud nevníkl, a on je bedlivě pozoroval, jejich gesta i jejich způsob mluvení. Zanedlouho se z jeho slovníku začaly vytrácet hrubé výrazy, v chůzi se přestával klátit jako námořník, neměl už tak drsné způsoby. Zvali ho do domu i jiní členové Debatního spolku a seznamoval se u nich s kultivovanými dívkami v sukních až na zem a debatoval s nimi při čaji o básnictví, umění a gramatických problémech. Už se tak urputně nepřel a pěkně řezaný obličej se mu čím dál tím víc rozjasňoval úsměvem. Byl novým přátelům oddán upřímnou a hlubokou náklonností. Když se studenti oaklandské vyšší střední školy od Jackových nadšených známých dověděli, že je tak roztomilý a pozoruhodný a že ho jistě čeká skvělá budoucnost, všimli si špatně oblečeného a znuděného spolužáka s větším zájmem a bylo jim divné, co se jejich starším přátelům na něm tak líbí.

Členové nedávno založené organizace Socialistické strany v Oaklandu Jacka pozvali, aby vstoupil do strany. Seznámil se mezi nimi například s Austinem Lewisem z Britské socialistické a dělnické strany a s německými socialisty, kteří žili v emigraci, protože v jejich vlasti byly socialistické

strany zakázány — se zralými muži, dobře vyškolenými, mezi nimiž si mohl vytříbit své politické názory. Místní organizace socialistické strany v Oaklandu sdružovala lidi spíše s kulturními než hospodářskými zájmy, její členové se scházeli na hudebních večírcích, na sklenici piva, nebo ke studiu a debatám o politické ekonomii. Byli to intelektuálové a teoretikové, jichž se třídní boj bezprostředně netýkal — v oaklandské stranické organizaci doposud neměli ani jednoho dělníka. Jack byl vděčen za jejich společnost a za to, že se mezi nimi poučil, ale nevěřil, že socialismus je věcí intelektuálů. Byl přesvědčen, že to je věc dělníků a dělnických odborů, jejichž úkolem v historickém vývoji je vést třídní boj, vybojovat revoluci a zřídit světový stát ovládaný proletářskou třídou, který podle učení Karla Marxe bude příštím stupněm civilizačního vývoje.

Začal chodit na dělnické schůze, mluvil o socialismu v dělnických odborech, poslouchal řečnické projevy v parku před radnicí. Jednou odpoledne se rozkurážil, vyskočil na lavičku a pověděl velkému davu posluchačů, že kapitalismus je režim organizovaného lupičství, který rdousí dělníky a hledí z nich vymačkat všechny síly, a když z jejich práce už nemůže mít ani dolar zisku, pak je odhodí na smetiště. Nemluvil ani deset minut a už se na Broadway rozlehl dusot koňských kopyt, u parku zastavil černý policejní vůz, z něho vyskočili dva strážníci a Jacka zatkli. Odvedli ho davem posluchačů k policejnímu vozu, za zamčenými ocelovými dvířky ho vezli oaklandskými ulicemi a vsadili ho do vězení. Když Jack protestoval, že tohle se nesmí dít v Americe, kde je svoboda projevu, a že socialismus není žádný zločin, seržant mající službu na policejní strážnici prohlásil: „Možná že není, ale veřejně mluvit bez úředního povolení je zločin.“

Oaklandské noviny o tom uveřejnily zprávu pod velikánskými titulky, v níž nazývaly Jacka „kluk socialista“, a tato přezývka mu pak zůstala kolik let.

Co udělalo z Jacka Londona socialistu? Vyrostl v chudobě, poznal hlad a nedostatek, poučil se o krutém údělu těžce pracujícího člověka. Ale statisíce Američanů, jeho současníků, vyrostly o hladu a v nedostatku, a přece věřily v kapitalistický režim a hleděly si také urvat svůj podíl na bohatství. Stejně jako moudře usoudil, že někteří z lidí, které poznal „na trati“, byli by odpadním materiálem v každém ekonomickém systému, právě tak pochopil, že jeho strádání

v mládí bylo jen zčásti zaviněno nesociální strukturou amerického kapitalismu, že hlavní příčinou, proč tehdy trpěl hladem, bylo matčino nerozvážné obchodní podnikání, jímž Johnu Londonovi znemožnila spolehlivý způsob, jak si vydělávat na živobytí.

Profesor Chaney byl rozený socialista, ještě než se Jack narodil. Horlivě se zajímal o dělnickou třídu, ovšem jen jako intelektuál, a věřil, že lidé jsou odhodláni pracovat těžce a pracovat společně. Mnoho let přednášel a psal články o příčinách chudoby a prostředcích, jak ji odstranit. Účast s dělnickou třídou a zájem o její osud je u těch, kdo k ní sami nepatří, věcí povahového založení, vyvěrá z vřelého lidského pochopení, z citlivosti vůči utrpení druhých, ze štědrého srdce a z obraznosti natolik živé, aby se člověk dovedl vžít do utrpení svědomitých mužů, jejichž ženy a děti strádají hladem. Profesor Chaney všechny tyto vlastnosti měl, a ty z něho udělaly socialistu — jeho syn je po něm zdědil a rovněž i z jeho syna udělaly socialistu.

Chaney byl Ir — Jack také. Oba měli také příznačné rysy, které vespolek vytvářejí irskou národní povahu: soucit s utrpením druhých a štědrost, pokud jde o nakládání s vlastním majetkem, bojovnost, již je zapotřebí pro třídní boj mezi kapitálem a dělnickými masami, odvahu dát se do prance s napraženými pěstmi.

Stal by se Jack socialistou nebýt toho, že se Flora pletla Johnu Londonovi do jeho záležitostí a že Jack doma žil v nouzi? Patrně ano, ale pravděpodobně by se z něho byl stal spíš stoupenec intelektuálního nebo utopistického socialismu než socialista-spolubojovník dělnické třídy, byl by se spokojil pozvolným, staletí trvajícím vývojem k socialistické společnosti pomocí rozšířeného volebního práva, místo aby povstal a bojovně vznesl požadavek, že se proletáři celého světa musí spojit, shodit své okovy a spojenými silami svrhnout vládnoucí loupeživou třídu!

Pro Jacka byl socialismus logickým výsledkem historického a ekonomického vývoje lidské společnosti, stejně nezvratným jako násobilka. Nashromáždil si doposud jen omezenou zásobu politických znalostí, ale osvojil si už vědeckou metodu myšlení, schopnost vytrvale sledovat určitý směr logického uvažování a měl odvahu přidržet se závěrů, k nimž takto dospěl, byť byly možná i v rozporu s jeho dřívějšími názory.

A pak tu byla snad hlavní příčina jeho nesmiřitelného postoje vůči dosavadnímu společenskému řádu: jeho neman-

želský původ. Nemohl jej vzpurně vyčítat matce, nemohl nikterak napravit křivdu na něm spáchanou, ani ji veřejně vyjevit, a tak ho trýznila jako hnisavá rána v temnotách podvědomí. Jedině vzpoura proti vnějšímu světu mohla se dramatickou velkorysostí vyrovnat jeho vnitřní vzpouře — vzpoura, kterou bude vládnoucí třída svržena zotročenou třídou, k níž sám také patřil.

Obchodní komora a oaklandská společenská smetánka se na něho zuřivě rozhořčovala, že hlásá svržení dosavadního řádu, a ještě k tomu v parku před radnicí! Rozpoutala agitaci, že by Jacka měli odsoudit do vězení. Když došlo k soudnímu řízení, soudce doporučil, aby se jako polehčující okolnost vzalo v úvahu Jackovo mládí, a propustil Jacka na svobodu s výstrahou, že ho dá zavřít, kdyby se něco takového opakovalo. Po Jackově smrti oaklandský starosta Davies věnoval jeho památce dub v parku před radnicí nedaleko místa, kde byl Jack při svém prvním ohnivém projevu zatčen.

Jenže zatčení a nepřáznivé články v novinách otráslý jeho postavením, které si začínal v oaklandské společnosti upevňovat. Místní organizace Socialistické strany mu zůstala věrná, stejně jako Edward a Mabel Applegarthovi a někteří jiní členové Debatního spolku, ačkoli si Jack tehdy stěžoval, že opravdu slušní mládenci, kteří ho měli upřímně rádi, zakazovali svým sestrám ukazovat se s ním na veřejnosti. I některé rodiny, k nimž mu zjednálo přístup členství v Debatním spolku, nyní před ním zavřely dveře. Ostatek oaklandského obyvatelstva pak ještě pevněji setrval ve svém mínění, že Jack je ve slušné společnosti nepřijatelný. Vědělo se o něm, že žil jako psanec; v dobách, kdy se kamarádlil s piráty, vídali ho lidé v přístavě opilého a v pochybné společnosti; potloukal se jako tramp a pocházel z chudé, společensky vyřazené rodiny, která bydlela v nejhorší městské čtvrti. Lidé v Oaklandu byli přesvědčeni, že když je někdo socialista, jistě to nemá v hlavě v pořádku, a ještě ke všemu nejspíš je — nemrava. Socialista byl tehdy zjev tak vzácný, že k němu noviny vysílaly zpravodaje, aby s ním sepsali interview. Když Jack směle zastával názor, že všechny podniky, které slouží k užitku veřejnosti, mají být vyvlastněny městskou správou, noviny ho pranýřovaly jako rudého pobuřovače a divokého anarchistu. V uveřejněných interviewech ho líčily jako patologické individuum, podivínské a nenormální. Jack se hrozil, jak by asi o něm

psaly, kdyby se přiznal, že věří v kolektivní vlastnictví všech výrobních prostředků.

Ačkoli Mabel Applegarthovou Jackovo zatčení pohoršilo a nebyla nadšena utrhačskými novinářskými reportážemi, nikterak se tím její vztah k Jackovi nezměnil. Navzájem se dokonale doplňovali: Jack byl drsný mladík, plný nezkrotné životní energie — Mabel byla jemná, kultivovaná, uhlazená. Vyjžděli si spolu na kolech za město, pochutnávali si na studených obědech nad zálivem v berkeleyjských kopcích mezi uzrálým vysokým obilím zpestřeným vlčími máky, podnikali spolu dost daleké plavby v Jackově člunu. Jednou v neděli odpoledne na počátku léta se nechali unášet vlnami v zátoce, Mabel v nadýchaných bílých šatech a v širokém malebném klobouku, způsobně usazená na přídi, předčítala Jackovi Swinburnovy pesimistické básně hlasem tak konejšivým, že Jack usnul. Nastal odliv a jejich člun uvízl na mělčině, ale Mabel věděla, jak málo se Jack vyspí, a tak ho nechtěla rušit v spánku. Když se probudil, musel si své jediné pěkné kalhoty vyhrnout nad kolena, aby mohl Mabel přenést přes bahno na břeh. Nikdy ji ještě neměl v tak těsné blízkosti.

Při zkouškách na konci prvního semestru dostal Jack jako průměrnou kvalifikaci dvojku. Pak celé léto pracoval, aby uživil rodinu a vydělal si ještě pár dolarů na školní potřeby, a potom se zas vrátil na vyšší střední školu, aby se dál připravoval na universitu. Studentský časopis *THE AEGIS* mu dál uveřejňoval články a povídky: celkem jich otiskl deset. V povídkách jako „Ještě jeden nešťastník“ a „Věří někdo ve strašidla?“ se projevuje vrozený smysl pro povídkovou strukturu. „Ještě jeden nešťastník“ vypráví o slibném mladém hudebníkovi, který se vydá do světa, aby si dobyl slávy jako Ouidin Signa, kolik let se těžce protlouká, až se přesvědčí, že má jen nepatrné nadání, a ještě je rád, když nalezne útočiště jako houslista v laciné pivnici — jednou v noci se zabije, protože si uvědomí, jako hluboká propast zeje mezi skutečností a jeho dětinskými sny.

V povídce „Daleká plavba“ Jack vypráví o svých zážitcích na velrybářské lodi *SOFIE SUTHERLANDOVÁ*, raduje se z krás, jaké se mu každým okamžikem zjevují: pozoruje velebný a graciózní let racků, nádherné západy slunce na moři, hejna delfínů, velrybu, která na závětrné straně lodi chrlí z chřípí vodotrysky, nezřetelnou postavu kormidelníka v noční tmě a plachty ztrácející se zraku pod černou klenbou.

Nic mu nezní drsně a disonančně, všechno harmonicky zvučí, všechno je pro něho hudbou: skřípění kladky, sténání napjatých plachet, nárazy vln do rozhoupané přídě, pleskání létavých rybek v plachtoví. Jásá, když je příroda rozvztekaná, když je obloha zatažena černými bouřkovými mraky, ve vichru vyjí neviditelní démoni a přes paluby se hrnou proudy vod. Když vyduté plachty povolí nebo když napjaté lano praskne, krev se mu rozproudí rozkoší z boje a zpěvává hesla námořníků, kteří zuřivě zápolí o život s matkou Přírodou, zní mu jako libozvučné melodie.

Vroucně miloval přírodu pro všechny její krásy, ale především ji miloval pro její smlu, pro tu strašlivou moc, proti níž si člověk připadá jako trpaslík.

O liberálních zásadách redakce oaklandského středškolského časopisu *THE AEGIS* svědčí socialistický článek „Optimismus, pesimismus a patriotismus“, jež časopis Jackovi otiskl a v němž Jack obvinil „vládnoucí vrstvy, že masám zbraňují, aby se vzdělávaly, protože vzdělání by je podnítilo ke vzpouře proti zotročovatелům“. Přičítal kapitalismu za vinu dlouhé pracovní hodiny, vykořisťování a neustálé snižování mezd, což nutně musí vést k sociální a mravní degradaci, a vyzýval: „Vy Američané, patrioti a optimisti, probudte se! Vyrvěte otěže zkorumpované vlády a dejte masám vzdělání!“

Protože Jack dovedl přesvědčivě řečnit, byl vybrán za jednoho z debatérů pro závěrečná debatní cvičení ve vánočním týdnu. Dá se ovšem předpokládat, že diskusní námět byl na hony vzdálen socialismu, ale sotva Jack mluvil pár minut, najednou se odmlčel, přešlápl z nohy na nohu a začal na obecnostvo nastrojených studentů, jejich rodičů a příbuzných útočit nejjízlivějšími obžalobami, v nichž je obviňoval ze sociální nespravedlnosti — tak sverepými, jaké jedna z jeho posluchaček podle svého svědectví ještě jakživa neslyšela. Prohlásil, že nadešel čas, kdy stávající společenský řád musí být svržen, a že on je hotov jej svrhnout všemi prostředky, i násilím. Mluvil tak vášnivě, až se jeho posluchači domnívali, že je smyslů zbavený a že v ohni třídního boje už už své nepřátele popadne za chřtán. Někteří dostali strach, jiní to pokládali za žert, nebo zas nařískali, jak je žalostné, že ten mladík si ani neuvědomuje, co mluví, že trpí velikáštvím a latentním šílenstvím. Členové školského správního výboru žádali, aby se s ním naložilo drasticky.

Jak se zdá, Jack se této příležitosti možná chopil, aby vypálil ránu na rozloučenou, protože se na oaklandskou vyšší střední školu víckrát nevrátil. Byl by na ní musel studovat ještě dva roky, aby mohl složit maturitní zkoušku, ale minulo mu už dvacet let a byl přesvědčen, že nesmí plýtvat časem. Místo toho se dal zapsat do rychlého kursu v Alamedě, aby se do podzimu připravil k přijímací zkoušce na universitu. Eliza mu na kurs dala peníze. Dělal tak rychlé pokroky, že mu po pěti týdnech majitel přípravky vrátil peníze (Jack to aspoň tvrdí) a řekl mu, že bude muset z jeho školy odejít, aby ji nepřipravil o dobré jméno, kdyby se na universitě dověděli, že na přípravec mohl za čtyři měsíce zvládnout učební látku normálně rozpočtenou na dva roky.

Pět týdnů rychlého učebního kursu mu prospělo nejen vědomostmi, které získal, ale hlavně tím, že se naučil soustavnému studiu. Příštích dvanáct týdnů se ve Flořině bytě zamkl ve svém pokoji a vtloukal si do hlavy knihu za knihou tou nejnásilnější učební metodou. V téže době, kdy profesor Chaney na vyšší škole astronomie v Chicagu u svého psacího stolu vysedal prý devatenáct hodin denně, studoval astrologii a sestavoval horoskopy, jeho syn Jack v domě Flory Wellmanové v Oaklandu také seděl u stolu a studoval matematiku, chemii, dějepis a angličtinu. Přestal chodit do Debatního spolku i do schůzí Socialistické strany, ba dokonce se s těžkým srdcem rozřehnal i s návštěvami u Edwarda a Mabel Applegarthových. Tělo i mozek mu začínaly ochabovat a oči ho pálily, ale nepovolil.

Po dvanácti týdnech odjel tramvají do Berkeley, kde se zdržel několik dní, než složil zkoušky. Byl přesvědčen, že se zdarem, a tak si vypůjčil malou plachetnici, vzal si s sebou svinuté houně a trochu zásob studeného jídla a jednou ráno ještě za odlivu vyplul na záliv. Dal se proudem a prudkým větrem unášet ke Carquinezské úžině, kde vysoko stříkala vodní tříšť. Nechal za zádi staré známé ukazatele směru na pevnině, podle nichž se naučil plavit na REINDEERU. V Benicii zakotvil a vypravil se hledat lodi rybářské policie. Našel na nich své bývalé kamarády. Když se rozhlásilo, že se Jack London vrátil, vypravili se za ním rybáři, aby si s ním popovídali o starých časech a připili mu na zdraví. Jack se už půldruhého roku nedotkl alkoholu, a tak se tentokrát rádně opil.

Pozdě v noci mu jeho bývalý velitel od rybářské hlídky

půjčil plachetnici na lov lososů. Jack si do ní naložil dřevěné uhlí a rybářská železná kamínka, hrnek na vaření kávy a pánev, kávu a maso a čerstvého okouna a vyplul. Zatím už nastal prudký odliv, zdvihl se divoký víchř a bičoval moře do vysokých vln. Suisunská zátoka se vztekale pěníla bílým příbojem. Jack namířil plachetnici proti němu a proplul jím. Vysoké vlny nastříkaly do plachetnice na stopu vody, ale Jack se smál, když se jí brodil, a zpíval si „Buď na mou dcerku hodný“ a „Za mnou, vy tuláci a karbaníci“ — oslavoval takhle svůj vstup do světa, kde si lidé dobývají živobytí prací svého mozku.

Po týdenní plavbě se osvěžený vrátil a začal studovat na universitě. James Hopper píše, že tehdy vypadal jako pravzvláštní kombinace skandinávského námořníka a řeckého boha, ale přitom působil dojmem úplně chlapeckým, protože mu chyběly dva přední zuby, o které někde přišel v bujně rvačce. Hopper píše, že když Jacka prvně uviděl na universitě, napadla ho slova „prohřátý sluncem“. Jack měl kučeravé, „skoro zlaté vlasy“, osmahlý silný krk v rozhaleném nízkém límci košile a oči rozzářené jako moře zalité sluncem. Oblečen byl nedbale, v plandavých šatech, a v širokých ramenou se trochu kolébal jako pravý námořník. Měl plno nezkrotného nadšení a ohromných plánů. Hodlal se zapsat do všech kursů angličtiny, vůbec do všech, a téměř do všech kursů přírodovědných, dějepisu a filosofie. Hopper závěrem píše, že Jackova osobnost sálala teplem jako samo slunce, že byl neohrožený, mladý a dojemný, čistý a rozdyčtělý.

Jedna dívka z oaklandské střední školy, kterou Jack ještě před rokem odpuzoval zevnějškem a drsnými způsoby, byla překvapena, když se s ním setkala na universitě, jak byl pořádný, čistý a šťastný, jak se tam vžil do prostředí, jak už neměl ani stopu nemotornosti, zasmušilosti a rozpačitosti, která ho tak odcizovala mládeži na střední škole. Na universitě býval hodně pohromadě s Mabel Applegarthovou. Našel tam i své druhy z Debatního spolku. Mezi studenty měl pověst mladíka, který si užil divokých a romantických dobrodružství — získal si hodně přátel, vážili si ho a byl mezi nimi všeobecně oblíben.

Kalifornská universita měla pěknou knihovnu a dobrou fakultu. Jacka tam práce opravdu těšila. Uveřejňovali mu články o ekonomii a politice v oaklandských *Times* a vydávali mu povídky v místních časopisech jako *EVENINGS AT HOME* a *AMATEUR BOHEMIAN*, ale zřejmě se nepokusil poslat něco k oti-

štění do univerzitního literárního časopisu THE OCCIDENT. Vydělával si dál příležitostnými pracemi v Oaklandu, a když byl zase úplně bez peněz, šel si vypůjčit čtyřicet dolarů od Johnyho Heinholda, majitele výčepu POSLEDNÍ NADĚJE, kde si svou první sklenicí whisky kdysi připil na koupi plachetnice RAZZLE DAZZLE.

Jackovi ještě ani nebylo šest let a už věděl, že John London není jeho otec, ale doposud neměl ani tušení, kdo tedy jeho otec je. Teprve tehdy se nějak dověděl o Chaneyově letáku. Nikdy neprozradil, z jakého pramene, ale těch pramenů mohlo být více. Snad mu John London na sklonku života pověděl pravdu, poněvadž cítil, že už dlouho nebude živ, a chtěl, aby ji Jack znal. Možná že Jack něco pochytil z rozhovorů starousedlíků ze San Franciska a Oaklandu, z nichž mnozí věděli, čím je syn. Snad ho někdo upozornil na článek v CHRONICLE o Floře a Chaneym nebo mu někdo napověděl, aby si v tom listě vyhledal zprávu o svém narození, a tak se Jack dověděl, že se narodil s příjmením Chaney. A Flora si přece pořád schovávala svůj oddací list (datovaný osm měsíců po uveřejnění zprávy o Jackově narození), na kterém se podepsala jako Flora Chaneyová — měla jej dokonce ve skřínce na zámek, jenže ta se nezamykala!

Když se jednou na teplém slunci Jack procházel s Edwardem Applegarthem po Broadway, svěřil se příteli se svým objevem. Applegarth vzpomíná, že jím byl Jack úplně ohromen a prosil, zda by mohl použít adresy Applegarthových, až bude psát Chaneymu: nechtěl matce způsobit bolest ani sebemenším náznakem, že něco ví o její pohnuté minulosti, a bál se, aby se jí dopis od Chaneyho třeba nedostal do rukou. Požádal Chaneyho o odpověď na tři otázky, které ho pak měly mučit a trýznit až do konce života: *Kdo byl můj otec? Měla má matka pověst prostopášnice? Neměla nějakou zlou nemoc?*

V prvním semestru složil zkoušky na jedničku a na dvojku, o vánočních prázdninách pracoval jako nádeník a pak se zas vrátil na universitu. Ale za několik týdnů se přesvědčil, že svádí zápas beznadějný. Jeho odchod z university se vysvětloval tím, že profesor angličtiny, jemuž dal Jack přečíst rukopis jedné své povídky, na okraji stránky ohodnotil Jackovu práci řeckým ekvivalentem slova „šmejda“. Skutečná příčina je však prozaičtější: John London jako vysloužilý z občanské války dostal koncesi k podomnímu obchodu a v Alamedě dům od domu prodával obrázky, ale měl

chatrné zdraví a nevydělával dost, aby se s Florou uživil. Jack se té povinnosti musel ujmout sám. Nebýt nouze o peníze, byl by na universitě asi dostudoval, dál by vydával články a povídky v časopise *THE OCCIDENT* a snad by měl i trpělivost dokončit studia, složit zkoušky a získat diplom.

Přestože rodina byla v tak zoufalé tísní, Jack si ještě vsadil na poslední kartu, než si začal shánět manuální práci. Umínil si, že má-li z něho být spisovatel, udělá nejlíp, když si sedne ke stolu a dá se do psaní. Snad přece něco prodá. Snad tím uživí rodinu, snad si vydělá víc než dolar denně, jímž se běžně odměňuje tělesná práce. Pět let četl, diskutoval, mozek měl napěchovaný a rozohněný vědomostmi — měl upřesněné myšlení, viděl nazapomenutelné obrazy přírody v celé její kráse i v rozpoutané bouři, pracoval a prožíval dobrodružství bok po boku s muži všech národností. Nadešel čas, aby začal rozdávat ze svých tajně nashromážděných pokladů.

Znovu se zamkl ve svém pokoji. Vytrvale psal o překot patnáct hodin denně, den ze dne: vážné úvahy, vědecké a sociologické články, povídky, žertovné rýmovačky, tragické básně blankversem, hrozitánsky dlouhé eposy ve spenserovských strofách. V zápalu tvůrčí horlivosti zapomínal jíst — říkal pak, že je div, že ta tvůrčí horlivost neměla pro něho osudné následky.

Jakmile své rukopisy přepsal na stroji, posílal je za poslední peníze na východ. Když mu přišly zpátky zamítnuté, prodal směšně lacino své knihy a šatstvo, vypůjčil si, kde mohl, a psal dál. Ale když se v domácnosti projedl poslední dolar a nebylo už co jíst, odložil Jack pero a našel si práci v prádelně v Belmontově akademii, kde kdysi studoval Frank Norris. Měl postaráno o ubytování a stravu, takže mohl svou měsíční mzdu třicet dolarů odevzdávat Floře — nechával si z ní jen peníze na tabák. V prádelně třídil, pral, škrobil a žehlil bílé košile, límce, manžety a bílé spodky studentů i profesorů a osobní prádlo jejich manželek.

Dřel v potu tváře dlouhé týdny bez konce, pracoval i v noci při elektrickém světle, aby špinavé prádlo bylo včas vyprané. Kufr plný knih, které si v tak naivní naději přinesl s sebou, vůbec ani neotevřel, protože když se po práci navečeřel v kuchyni Akademie, unaven se skácel na postel. V neděli se nezmohl na nic jiného než válet se v trávě ve stínu, číst humoristické časopisy a vyspat se po osmdesátihodinovém pracovním týdnu. Když v neděli nebyl přlíš

unaven, vyjel si na kole do Oaklandu a pobyl několik hodin u Applegarthových. Věděl, že uvízl ve slepé uličce, ale nevěděl, jak se z ní má dostat. Má dát výpověď a najít si jiné zaměstnání? Ale ta jsou všechna stejná, a když člověk pracuje jako nádeník, nemá ani kdy užívat volného času, číst a přemýšlet, ba ani žít. Je zkrátka jen stroj, který se musí s dostatek najíst a vyspat, aby nazítří zas mohl pracovat. Jack si kladl otázku, jak dlouho bude muset takhle nesmyslně dít a jak má nalézt cestu, která povede k takovému životu, jaký by si přál.

Odpověď na ni mu dal Osud. V Klondiku bylo objeveno zlato, a když na jaře roku 1896 začala velká honba za zlatem, octl se Jack v předvoji. Pustil se do toho bez rozmyšlení, ačkoli Flora a John London byly živi z jeho vydělaných třiceti dolarů, ačkoli se proto zřekl studia na universitě i psaní. Lákalo ho dobrodružství.

Zase mu přispěla na pomoc věrná Eliza. Její manžel, kterému už bylo přes šedesát, se rovněž nakazil zlatou horečkou. Eliza si vypůjčila tisíc dolarů na svůj domek a ze svých úspor vybrala pět set dolarů, aby manžela a bratra vybavila na cestu. Jack se Shepardem se vypravili přes záliv do San Franciska, kde se obchody zařídily na prodej veškerého vybavení pro Aljašku, a koupili si tam kožichy, kožešinové čepice, vysoké boty, červené flanelové košile, houně, stan, železná kamínka, sanice, řemeny a nástroje, aby si mohli udělat saně a ložky, a pro každého tisíc liber potravin.

12. března 1897 vypluli na lodi *UMATILLA*, na níž se Jack vrátil do San Franciska, když skončilo jeho trampské období. Zase byl nejmladší v pestré směsici zlatokopů: hezký, modrooky, družný pořízek, který se mohl směle změřit s každým v debatě, ve rvačce i v každodenní práci. Nebyl úskočný ani zlomyslný, každého měl rád a každý měl rád jeho. Na *UMATILLE* se Jack spřátelil s Fredem Thompsonem, s horníkem Jimem Goodmanem a s tesařem Sloperem. Tato čtveřice měla zůstat spojena pevným přátelstvím po všechny příští těžké doby.

UMATILLA, přeplněná až po palubní zábradlí dobrodružnými zlatokopy, proplula vnitřním průlivem a zakotvila před přístavem Skagway. Záchrané čluny odvezly nedočkavé zlatokopy na pobřeží Dyea, kde už tabořily tisíce podnikavců

mezi tunami zásob na arktickou zimu a handrkovaly se zuřivě s Indiány, aby jim odtáhli jejich náklad dál do vnitrozemí. Když Jack se Shepardem vypluli ze San Franciska, platila se Indiánům taxa šest centů za dopravení jedné libry nákladu přes Chilkootský průsmyk. Ale když připluli na pobřeží Dyea, byla poptávka po nosičích už tak velká, že Indiáni taxu zvýšili na třicet až čtyřicet centů za libru nákladu, a jakmile užaslý zlatokop jen okamžik zaváhal, ihned taxu vyhnali na padesát centů.

Jack se Shepardem ji nemohli zaplatit, nezbyl by jim pak ani dolar, a Severozápadáci čili Žlutoholeňáci (jak se přezdívalo tamější jízdni policii) na každém zlatokopovi požadovali, aby mimo tisíc liber zásobních potravin měl s sebou ještě pět set dolarů na hotovosti, jinak ho hnali zase zpátky třeba až od řeky Yukonu. Bylo hodně hledačů zlata, kteří tak vysokou taxu nemohli zaplatit a nebyli dost silní, aby si mohli na vlastním hřbetě vynést zásoby přes krkolomně strmý Chilkootský průsmyk — museli se tedy poražení vrátit na UMATILLE do San Franciska. Shepard odjel s nimi, ale Jack s Thompsonem, Goodmanem a Sloperem zůstal na Aljašce.

Byl teprve duben, ale než v zimě zamrznou řeky, čekalo je kolik měsíců těžké lopoty: museli se s celým nákladem na hřbetě dostat přes Chilkootský průsmyk, potom pětadvacet mil pěšky k Lindermanovu jezeru, pak se přes ně přeplavit na voru, proplout peřejemi a pod nimi ještě kolik set mil proti proudu po řece Yukonu až do Dawsonu — tam, kde se zlatonosná řeka Klondike vlévá do Yukonu. Kdyby jim řeky zamrzly, nedostali by se už dál. Jacka jako jediného námořníka v partě poslali koupit malý člun, pečlivě v něm uložili zásoby a táhli jej proti proudu po řece Dyea, nazvané také Lynnův průliv. K úpatí Chilkootského průsmyku bylo odtamtud sedm mil — když tam dorazili, vynesli zásoby z člunu, zakopali je do země a po prudké řece se rychle vrátili na pobřeží Dyea, kde znovu naložili plný člun zásob. Za kolik týdnů dřiny, celí utrmácení od těžkých nákladů, přestěhovali osm tisíc liber zásob až k úpatí průsmyku.

Chilkootský průsmyk je známý jako jeden z nejněsnějších na světě, obzvlášť pro lidi s nákladem. Šplhá se ve skalách téměř kolmo do výše. Jack si naložil na záda sto padesát liber zásob potravin a vypravil se vzhůru do průsmyku, k jehož nejvyššímu bodu vede strmá stezka dlouhá šest mil. Muži po ní už stoupali v nepřetržitém proudu zdola

až nahoru. Po obou stranách odpočívali starší muži, slabší a méně otužilí, muži z kanceláří, kteří nikdy neuzdvihli nic těžšího než tužku a nyní byli úplně vyčerpáni... ti se pak nejbližší lodí vraceli zpátky do Států. Když Jackovi bylo v letním slunci už moc horko, svlékl si v půli cesty do průsmyku košili a kabát a před užasými Indiány vyrazil dál vzhůru jen v červených flanelových spodkách. Každý výstup vzhůru do průsmyku a sestup zpátky k úpatí trval celý den, takže Jackovi, Goodmanovi, Thompsonovi a Sloperovi zabralo plných devadesát dní, než osm tisíc liber zásob dopravili přes průsmyk. Ze žádné své knihy, kterou Jack později napsal, neměl tak velkou radost jako z toho, že na strmé stezce často předhonal indiánské nosiče, z nichž ani jeden zdola až nahoru nevynesl těžší náklad než on.

Od břehu Lindermanova jezera se opět musela vrátit celá skupina dobrodruhů, protože tam nebyly čluny. Jackova parta znovu zakopala své zásoby a každý den je po částech odtahala pěšky osm mil proti proudu řeky až k místu, kde Sloper narychlo sestrojil pilu. Pokáceli několik stromů, vyzdvihli kmeny na kozy a ručně je pilou rozřezali na prkna. A pak bylo na Jackovi námořníkovi, aby navrhl dvě loďky s plochým dnem. Pojmenoval je YUKONKÁ KRAŠAVICE a KRAŠAVICE Z YUKONU a v den, kdy byly spuštěny na vodu, napsal na každou báseň.

Nastříhal a sešil plachty a v rekordním čase přepluli v loďkách přes jezero, čímž získali náskok, a tak i naději, že se dostanou do Dawsonu dřív, než zamrzne řeka Yukon. Z jezera vpluli do jejího hlavního přítoku a museli se přichystat k poslednímu náporu. Před Běloušovými peřejemi stály u obou břehů řeky stovky člunů a v nich tisíce zklamaných mužů, protože každá loďka, která se pokoušela proplout peřejemi, až doposud se v nich překotila. Thompson prohlásil: „Jacku, jdi se na ty peřeje podívat, a jestli jsou moc nebezpečné...“

Jack obě jejich loďky uvázal u břehu. Seběhl se kolem něho dav mužů, kteří se většinou jakživi v loďce ani nesvezli, a všichni ho přesvědčovali, že proplout peřejemi znamená jistou sebevraždu. Jack si peřeje dobře prohlédl, pak se vrátil a řekl: „Nic na tom není. Ti druzí se pokoušeli v prudkém proudu veslovat, aby se vyhnuli balvanům. Ale my se tím proudem necháme unášet, a tak nemůžeme nikde narazit.“

Zásoby v loďce přikryl plachtovinou, přibil ji hřebíky

k okrajům loďky, přikázal Sloperovi, aby si s pádlem klekl na přídi, Thompsona a Goodmana posadil vprostředku k veslům, dal jim příkaz, aby pohnali loďku do největší možné rychlosti, a sám se posadil na zádi ke kormidlu. Pozorovaly je zástupy mužů na obou březích řeky a povzbuzovaly je radostným křikem. Drželi se stále uprostřed řeky v nejprudším proudu a bez nehody propluli peřejemi, pak na klidné vodě loďku uvázali a pěšky se vrátili pro druhou.

Jack byl okamžitě zahrnut lavinou nabídek, aby i ostatní loďky dostal přes peřeje. Dal si za každou zaplatit dvacet pět dolarů, zdržel se tam několik dní a vydělal pro celou partu tři tisíce dolarů. Mohl si vydělat ještě pět tisíc dolarů, ale bylo už uprostřed září.

Beztak se už zdrželi dlouho. V ústí řeky Steward, sedmdesát dvě míle před Dawsonem, překvapila je zima prudkou sněhovou vánicí a nemohli dál. Jackova parta obsadila opuštěný srub na břehu Yukonu, z pokácených borovic naštipala dříví a zásobila se palivem na dlouhé přezimování. Mezi padesáti až sedmdesáti muži, kteří uvízli v ústí řeky Steward, byl i lékař, soudce, univerzitní profesor a inženýr.

K řece se svažovaly vysoké kopce tu a tam rýhované hlubokými úžlabinami, které vyhlodaly horské potoky. Na obou březích se táhly borové lesy a leželo sněhu vysoko na čtyři stopy. Po tom dlouhém pochodu musel každý projít kolem Jackova srubu a bílý kouř, který líně stoupal z komína, byl velkým pokušením, protože sliboval teplo a odpočinek v pohodlí. V Jackově srubu se ohřívali Bílý den, Louis Savard, Peacock, Keogh, Pruette, Stevens, Malemute Kid, Del Bishop — lovci kožešinové zvěře, Indiáni, Žlutoholeňáci, otužilí tamější starousedlíci a muži ze všech končin světa, kteří později získali nehynoucí slávu v Londonových napínavých povídkách z Aljašky.

Jack tam prožil příjemnou zimu. Společnost byla sourodá a zároveň pestrá; v osadě byla spousta knih — sám Jack si přitáhl přes Chilkootský průsmyk Darwinovo dílo „O původu druhů“, Spencerovu „Filosofii stylu“, Marxův „Kapitál“ a Miltonův „Ztracený ráj“. Jeden starý aljašský zlatokop, kterého venku zastihla prudká vánice, vypráví, jak se polomrtvý připotácel do osady, otevřel dveře Jackova srubu, z nichž se vyvalil hustý dým, a uvnitř uviděl plno mužů, kteří pokuřovali z dýmek a pokoušeli se mluvit všichni najednou, řvali na sebe a mávali rukama. Když je slyšel, jak se zuřivě hádají, měl až strach, že snad v tom zápolení

s vánicí přišel o rozum. A oč se tolik hádali? Ó socialismu.

Jednou v noci W. B. Hargrave ze sousedního srubu vyslechl ohnivou debatu o Darwinově teorii mezi soudcem Sullivanem, lékařem B. F. Harveyem a Johnem Dillonem. Jack ležel na pryčně, mlčky je poslouchal a dělal si poznámky. Když se jeho přátelé nemohli dohodnout v jednom sporném bodě, Jack je upozornil: „To místo, které se pokoušíte citovat, zní takhle...“, „a uvedl přesný citát. Hargrave si došel pro Darwinovo dílo „O původu druhů“ do jiného srubu, kde si je předtím vypůjčili, přinesl je zpátky a řekl: „A teď nám to, Jacku, ocituj ještě jednou, zkontroluji to podle knihy.“ Z Hargravova svědectví vyplývá, že Jack ten citát uvedl přesně doslova.

Hargrave také vypráví, že když prvně vešel do Jackova srubu, Jack si na pryčně kroutil cigaretu, Goodman vařil něco k jídlu a Sloper truhlařil. Jack předtím napadl Goodmana pro jeho ortodoxní názory a Goodman se proti jeho britkým a vtipným útokům zarytě hájil. Hargrave se s Jackem dosud neznal a vzpomíná, že Jack ihned přerušil rozhovor a srdečně ho přivítal, upřímně pohostil a jednal s ním tak mile a kamarádsky, že Hargrave nemohl vůči němu zůstat zdrženlivý. Jack ho také okamžitě vyzval, aby se zúčastnil debaty.

Hargrave píše, že Jack byl dobrák od kosti, až nerozumně štedrý a královsky pohostinný. Měl vrozenou ušlechtilost, která odolávala i v nejdrsnější společnosti. Když se třeba jeho protivník při debatě nedovedl vymotat z pavučin vlastní nelogičnosti, Jack zvrátil hlavu naznak a rozchechtal se nakažlivým smíchem. Závěrečné Hargravovo hodnocení Jacka je tak výstižné, že stojí za to uvést je zde doslovně: „Častokrát za dlouhých nocí jsme s Jackem zůstali vzhůru, když druzí už spali, seděli jsme u plápolajících borovicových polen a povídali jsme si celé hodiny. Jack byl opravdu mužný zjev, jak si tam hověl u primitivního krbu a oheň mu vrhal odlesky na hezký obličej. Měl čisté, radostné, citlivé, nezatrpklé mladistvé srdce, ale opovážlivé sobectví mládí se u něho nikdy neprojevovalo. Vypadal, jako by mu bylo trochu víc než dvacet, postavu měl pružnou a silnou, krk měl vždy obnažený, zcuchaná hnědá kštice mu spadala do čela a on si ji při oživeném rozhovoru netrpělivě shrnoval rukou dozadu; měl senzitivní ústa, ale dovedl přísně a panovačně sevřít rty; když se usmíval, obličej se mu rozzářil, a oči mívával často jakoby zahleděné do vlastního nitra: byla to

tvář umělce a snílka, ale pevně řezaná, takže se v ní zračila silná vůle a bezmezná energie. Byl to „přírodní muž“, zkrátka pravý muž, skrz naskrz muž. Jeho duch prahnul po pravdě. Všechno, ať šlo o náboženství, nebo o ekonomii, zkoumal z jednoho a téhož hlediska: *Co je pravda?* Dovedl se nadchnout velkými myšlenkami. Každý, kdo se s Jackem setkal, užasl nad jeho intelektem. Čelil životu skvělou sebejistotou a tváří v tvář smrti zůstával vždycky neochvějně klidný.“

Fred Thompson koupil sanice a smečku psů a jel s Jackem probádat různé přítoky Yukonu. Podle Thompsonova svědectví byl Jack v přírodě jako doma, dokázal rozdělat oheň v prudké vánici, dovedl usmažit chutné placky se slaninou a postavit stan, aby se při teplotě třicet stupňů pod nulou mohli vyspat v teple. Jack by se asi smál, že tohle všechno je hloupost proti tomu, co musel dokázat jako král trampů, kdy celý rok spával pod širým nebem nepříkrytý ani houní a vařil si jídlo v plechovkách od konzerv nad ohněm třeba na železničním náspu.

Jack a Thompson začali hledat zlato v potoku Henderson, který se vléval do Yukonu jednu míli pod osadou na řece Stewardu. V místech, kde voda prudce proudila a nemohla zamrznout, zaryli lopaty do měkkého dna a vyhrábli písek promíšený lesklým prachem, jenž jim ulpíval na lopatě. Nedočkavě si na břehu potoka vykolkovali svůj zábor a rychle hnali psy se sánkami zpátky do osady na řece Steward, kde to ihned rozhlásili. Všichni muži do jednoho se vydali pěšky nebo na saních tažených psy, aby si také zabrali kus břehu. Thompson řekl Jackovi, že už mají v kapse nejmíň čtvrt miliónu. Jack asi už snil o tom, jak se vrátí do Oaklandu s žoky zlata, jaké skvělé živobytí umožní Floře a Johnu Londonovi, jak se Elize odvděčí za její tolikou štědrnou pomoc, jak se bude ucházet o ruku Mabel Applegarthové a jak bude mít konečně volný čas, aby se mohl stát spisovatelem.

Ty sny měly jen krátké trvání: staří zlatokopové, kteří si také honem odskočili k potoku Henderson, vrátili se do tábora rozchechtaní. Ukázalo se, že Jackovo zlato je jen slída! Podle Thompsonova svědectví to pro Jacka asi nebylo tak zlé zklamání: když se spolu plavili na Umatille, řekl prý Jack Thompsonovi, že nejede na Aljašku hledat zlato, ale sbírat materiál pro své knihy. Zajisté mu však nemohlo být docela lhostejné, že přišel o „nejmíň čtvrt miliónu“.

Nejlíp vypráví o Jackově pobytu na Aljašce Emil Jensen, podle kterého Jack vytvořil postavu svého Malemuta Kida a o němž později prohlásil, že to byl ušlechtilý člověk. Jensen píše, že se mu od Jacka dostalo prvních vřelých slov na uvítanou na studeném, nehostinném břehu řeky Steward. Jack ho přivítal takto: „Vidím, že jste námořník a že pocházíte z našeho zálivu, poněvadž jste dovedl ve svém člunu tady přistát a přitom na něm nemáte ani škrábnutí, ačkoli je tu tak prudký proud a tolik ledové tříště.“

Jensen píše, že Jack se v té chvíli na něho usmál mile jako chlapec a v očích mu zajiskřilo, jak je na něho upíral. Že byl vždycky veselý, vždycky roztomilý a vždycky spolehlivý přítel. Když se lidem nelíbily jeho socialistické názory, Jack jim říkal: „Vy ještě nejste pro socialismus zralí, ale to se spraví.“

Podle Jensena byl Londonův srub středem pozornosti, protože Jack byl nesmírně všestranný a dovedl upoutat zájem svých posluchačů. Když kamarádi někdy vyprávěli historky, které se zdály příliš divoké, a ostatní se k nim tvářili nedůvěřivě, Jack z nich vždycky dovedl vydobýt nějakou podrobnost, která měla hlubší význam. Drobné i velké události každodenního života v táboře mu zavdávaly podnět k přemýšlení, takže měl pocit, že tam neprožívá ani jedinou hodinu bdění, která by přišla nazmar. Pro něho bylo ve všem něco nového, co stálo za to, ať to byla partie whist, nebo nějaká debata, nebo studené trpytivá sluneční zář nad kopci k jihu. Ať mlčky s údivem na něco zadívaný, například tehdy v noci, kdy pod příšerně ozářenou oblohou viděl sněhovou pláň jako v jednom ohni, nebo v prudkém vzrušení zahleděný na mohutnou rozvodněnou řeku, vždycky byl jako na jehlách, neposedný a nedočkavý.

Jensen vypráví zábavnou historku, jak mu Jack jednou půjčil knihu „O původu druhů“. Když si Jensen stěžoval, že je příliš učená a že mu na ni jeho jednoduchá zásoba slov nestačí, Jack mu nabídl jako lehkčí četbu Haeckelovy „Záhady světa“, a když i tohle bylo na Jensena moc učené, vyhrabal Jack zpod svých houní Miltonův „Ztracený ráj“, který si cenil nejvýš ze všeho, co mu patřilo. Jensen se přiznal, že nemá rád básně a že by „Ztracený ráj“ asi nepřčetl. Jack se tedy vypravil pěšky do srubu níž na řece Yukonu, kde měli, jak věděl, Kiplingovu knihu „Sedm moří“, přinesl ji Jensenovi do srubu a naléhavě ho žádal, aby si z ní přečetl alespoň pár stránek, a tak se přesvědčil,

že poezie má svou krásu. Jensen si tu knihu přečetl celou a Jack vítězně zajásal, že se mu podařila velká věc.

Jensenův hold Jackovi si také zaslouží, aby zde byl uveden doslovně: „Jack byl společník, s kterým člověk okřál, který člověka podněcoval k přemýšlení a vždycky mu ochotně vypomohl. Nikdy si nedělal starosti, co ho to třeba bude stát, ani se mu nesnilo, že by z toho mohl mít nějaký prospěch. Ať se jednalo o rabovací výpravu na knihy po našem táboře, ať měl někomu pomoci strkat saně nebo ať měl dojít třeba dva dny pěšky pro balíček tabáku, když viděl, jak jsme zlostní a nevrlí, protože nemáme žádné kuřivo. Ať se jednalo o velkou nebo malou úsluhu, ať ho někdo o ni požádal, nebo nepožádal, vždycky byl ochoten se rozdat i rozdělit o to, co měl. Obličej měl rozjasněný úsměvem, který nikdy neochladl.“

Jack spoustu hodin proležel na pryčně a četl nebo si dělal poznámky o Aljašce, zapisoval si vyslechnuté příběhy, debaty, do nichž zasáhl, dialektické výrazy, osobité filosofické názory a povahové vlastnosti mužů, kteří k němu chodili do srubu. Ještě v roce 1937 si Thompson naříkal, že někdy nemohl Jacka přimět k tomu, aby našťupal dříví, protože Jack byl zaujat vychvalováním předností socialismu. Mnoho pamětníků dávných časů na Aljašce podává svědectví, že v zimě roku 1897 byl v táboře Steward oblíbeným námětem rozhovoru socialismus, poněvadž Jack nebyl nikterak ojedinělým zastáncem socialistické filosofie a ekonomie. Zlatokopové si ani neuvědomovali, jaká je v tom ironie, že takoví nezkrotní individualisté, kteří se vypravili za zlatem, jen aby se osobně obohatili, ve volném čase vysedají na schůzkách, na nichž se vychvaluje socialistické kolektivní vlastnictví. Jack by asi prohlásil, že na tom není docela nic tak divného, poněvadž to byli samí odvážní průkopníci, kteří se nebáli nebezpečí v neznámých, podivných a odlehlých končinách, a tedy ani nebezpečných, podivných a odlehlých ideí.

Konečně přišlo jaro a Jack si předsevzal, že se nenechá zahanbit svým odvážným a podnikavým dědečkem Marshalllem Wellmanem, který se jako chlapec na vlastnoručně vyrobeném voru pustil napříč přes jezero Erie a doplul na něm až do Clevelandu. Jack s doktorem Harveyem rozebrali Harveyův srub, Jack svázal klády ve vor a oba se na něm pustili po proudu řeky do Dawsonu, kde klády prodali za šest set dolarů.

Jackovi připadal Dawson jako cirkusové stanové město o padesáti tisících obyvatel, s blátivou hlavní ulicí z obou stran lemovanou výčepy, kde muži nejen pili, ale i jedli, spali, nakupovali zásoby, sjednávali různé obchody, tancovali s placenými tanečnicemi a prohrávali svůj zlatý prach v karbanu s falešnými hráči z povolání. Jídla byl nedostatek, porce šunky s vejci stála tři a půl dolaru, námezdním nádeníkům se platilo za den uncí zlata, která měla hodnotu asi sedmnáct a půl dolaru. V Dawsonu se sjelo pár největších dobrodruhů a dobrodružek z celého světa. Prostitutky se tam shromáždily v tak obrovském počtu, že je jízdní policie vykazala do ohrazeného prostranství na druhém břehu řeky, kterému se říkalo Všivárna. Přes řeku tam vedl most z dlouhatánské klády zavěšené na lanech a Jack si zaznamenal, že se málokterému zlatokopovi ten most zdál natolik nebezpečný, aby se po něm neodvážil přejít.

Podle Thompsona Jack „neudělal v Dawsonu ani ždíbek práce“. Ale zřejmě si dal aspoň pár dní práci se shledáváním klád v řece, které pak veslovacím člunem odtáhl k pile. Nač by také pracoval, když mohl jít bez peněz, kam mu jenom napadlo. Byl vítaným hostem ve výčepech, kde ho zlatokopové častovali pitím za to, že poslouchal jejich rozvláčné historie — dovedl totiž lidi ponouknout k povídání a sám jim pomáhal, aby se jim rozvázal jazyk, protože mu toho bylo zapotřebí víc než jejich špatné whisky. Ženám se líbil, protože byl hezký a dovedl mluvit — neměl sice peníze, ale byla s ním legrace. Když nebylo co poslouchat, sedí si na chodník a bavil dav lidí svými vlastními divokými historkami. Noci probděl v hernách: pozoroval tam karbaníky při hře a zapisoval si poznámky. Dovedl si vybrat vždycky pravé muže, lovce a starousedlíky, kteří byli na Aljašce už dávno předtím, než se přišlo na zlato v Klondiku, a tak si nashromáždil první spolehlivé zprávy ze starších dějin toho kraje. Věděl, jaký druh materiálu potřebuje, a věděl, jak si ho sehnat, protože si osvojil vědeckou metodu získávání poznatků, která přispěla k obohacení jeho pozdějšího díla.

Protože na Aljašce nebyla čerstvá zelenina, rozstonal se Jack na kurděje. V obličejí měl plno boláků a těch pár zubů, co mu zbyly, se začínalo v dásních viklat. Vzali ho do katolické nemocnice, kde prý za něho Thompson platil malý poplatek. Jack se tam léčil tak dlouho, dokud nebyl natolik v pořádku, aby se mohl vydat na cestu. Taylor, který

pocházel z Kentucky, John Thomson a Jack se v červnu vydali v malém nekrytém člunu na plavbu dlouhou tisíc devět set mil po řece Yukonu a dál po Beringovu moři. Jack seděl u kormidla. V poledne mívali příšerné vedro a na noc člun uvázali a utábořili se na břehu. Pluli napříč Yukonskou rovinou zamořenou milióny moskytů, propluli peřejemi a v domorodých vesnicích se dívali, jak Anglosasové tancují s Indiánkami.

Jack byl po kurdějích od pasu dolů skoro mrzák a v pravé noze měl křeče, takže ji často nemohl natáhnout, ale o půlnoci, když kamarádi už dávno spali, chodil střílet divoké ptáky. Každý den si psal deník. Vyličil v něm zpěv drozdů nad ostrovem v řece, křik koroptví, pronikavé skřeky racků a potáplic, let kulíků a divokých husí, krásu nocí na řece, po níž se nechávali unášet proudem, a pak si na okraj stránky poznamenal, že by se tenhle materiál mohl hodit do časopisů OUTING MAGAZINE nebo YOUTH'S COMPANION.

Jackově partě trvalo devatenáct dní, než po řece urazili těch devatenáct set mil. Bez nehody propluli při pobřeží Beringovým mořem a nakonec přistáli u St. Michaelu, kde zakotvili. Jack dostal práci topiče u kotlů na lodi, která vyplula ze St. Michaelu do Britské Columbie, a odtamtud se jako cestující v mezipalubí na zádi dostal do Seattlu. Pro ostříleného trampa bylo hračkou protlouci se na nákladních vlacích do Oaklandu.

Vrátil se domů bez vindry v kapse, ale přestože na Aljašce nevydoloval ani unci zlata, měl na zlaté horečky vydělat mnohem víc než leckterý zkušený zlatokop, který si zabral kus břehu třeba na potoce Bonanza.

IV

Jack se vrátil domů, do Oaklandu na Východní šestnáctou ulici číslo 962, ale Johna Londona už nezastihl naživu. Hluboce ho to zarmoutilo, protože svého nevlastního otce poznal jen jako hodného člověka a dobrého kamaráda.

Až doposud byl zdánlivě hlavou rodiny John London a vždycky vydělal nějakých pár dolarů, pokud mu to v pokročilém věku a při chabém zdraví bylo možno. Nyní se stal pánem domu Jack. Jako by neměl už tak dost velké starosti, adoptovala Flora vnuka svého zesnulého manžela, pětiletého Johnnyho Millera, synka mladší ze dvou dcer, s nimiž se John London přistěhoval do Kalifornie. Flora chlapečka milovala jako vlastní matka a zahrnovala ho něhou, jako by mu chtěla vynahradit, oč v dětských letech ošídila Jacka.

Jack toužil už jen po jediném na světě: aby z něho byl spisovatel. Nedospěl k tomu rozhodnutí jen tak libovolně, snad proto, že chtěl být proslulý, nebo dokonce slavný a bohatý, nebo že by chtěl vídat své jméno zveřejněné. Rozhodl se tak z čistě vnitřního popudu, protože si to neodbytně žádalo jeho povahové založení a vrozené nadání. V zápisníku měl zaznamenány charakteristiky různých postav už ze svých toulek „po trati“, popisy krajín z Aljašky, útržky rozhovorů a stručné dějové zápletky, které se mu bezděčně rojily v mozku, protože měl nadání pro bystrý a citlivý postřeh a pro výstižné slovní vyjádření svých pocitů a myšlenek. V tom rozhodnutí ho pak ještě utvrdilo poznání, že jeho otcem je vzdělaný a učený Chaney, jehož světem byly knihy a literatura. Při plavbě tisíc devět set mil po řece Yukonu i na lodi ze St. Michaela do Seattlu si už připravoval a komponoval povídky, které doma napíše. V Klondiku býval svědkem výjevů a rvaček, jež mu nedaly pokoj a důrazně se dožadovaly, aby je vylíčil.

Smysl pro odpovědnost se u něho uplatňoval jen střídavě. Když na ulicích prodával noviny a když pracoval v konzervárně, odevzdával všechno, co si vydělal, do posledního centu Floře na stravu a činži a na její pilulky — ale pak zanechal zaměstnání s pravidelným výdělkem a přidal se k partě pirátských lovců ústřic. Nějakou dobu ještě podporo-

val rodinu z peněz, které mu vynášelo pirátství, ale pak je začal zbůhdarma utápět v divých pitkách a na flámech. Když se vrátil domů se mzdou vydělanou na SOFT SUTHERLANDOVÉ, koupil si jen pár zánovních kusů šatstva a jinak ji zase odevzdal celou matce; když pracoval v továrně na spřádání konopí, v elektrárně a v prádelně, nechával si z výdělku pro sebe jen pětasedmdesát centů týdně. Ale pak po měsících jednotvárné dřiny, kdy se k rodině choval jako opravdu hodný syn, patrně mu smysl pro odpovědnost přestal fungovat, protože se z ničeho nic zase vrátil k dobrodružnému životu „na trati“ a potom na řece Klondiku. A nyní ve dvaadvaceti letech si docela clevědomě umínil, že se svým životem musí už naložit nějak užitečně, aby se konečně mohl sám před sebou ospravedlnit, nechá-li zas rodinu na holičkách.

Zatím však odsunul do pozadí příběhy, které se v něm hlásily o literární vyjádření. Po šestnácti měsících dobrodružného života se smysl pro odpovědnost u něho znovu ozval: Jack nechtěl, aby matka a její adoptovaný vnouček z jeho viny strádali nedostatkem kolik měsíců, než se mu podaří zvěčnit své povídky na papíře a prodat je časopisům. Ti dva potřebovali pomoc ihned, a tak si musel ihned sehnat nějakou práci.

Byly zlé časy. Divoký západ se dosud nevzpamatoval z hospodářské krize, která jej zachvátila v roce 1893 a před pěti lety Jacka přiměla, aby za hodinovou mzdu deset centů pracoval v továrně na spřádání konopí. Jack si zlostně uvědomoval, že dokud je u moci ziskuchtivá společenská třída, budou časy pořád zlé; kolik dní prochodil po ulicích a v přístavě, ale přesvědčil se, že si nesežene ani nejhuř placenou nádenickou práci. Protože už měl praxi, pokoušel se dostat místo v kdejaké oaklandské prádelně. Dva z posledních zbylých dolarů vyhodil za inzeráty v novinách. Odpovídal na inzeráty starých nemocných lidí, kteří hledali společníka, a dům od domu dohazoval šicí stroje, tak jako před dvaceti lety John London v San Francisku. Měl pocit, že se zahazuje, když se uchází o mizerně placená zaměstnání. Vysvěcený vážil sto šedesát pět liber a každá ta libra byl sval ztvrdlý dřinou, ale nemohl nalézt nic než tu a tam příležitostné práce, jakými si vydělával, když studoval na oaklandské střední škole: žatí travníků, přistřihování živých plotů, mytí oken, klepání koberců na dvorku za domem. Jen málokterý den si vydělával celý dolar.

Mabel a Edward Applegarthovi mu po návratu domů uspořádali večeři na uvítanou. Pozvali hodně jeho dřívějších známých z Debatního spolku Henryho Claye, kteří mu srdečně tiskli ruku, poplácávali ho po rameni a ujišťovali, jak jsou rádi, že ho zase mají v Oaklandu. Jacka jejich vřelé přivítání dojalo a častoval je vyprávěním o Klondiku... a každého si odvedl stranou do koutka a ptal se ho, zda neví, kde by mohl nalézt nějaké zaměstnání. Tohle však nikdo nevěděl.

Po šestnácti měsících života mezi drsnými zlatokopy v osadě Steward a v Dawsonu se Mabel Jackovi zdála ještě jemnější a krásnější než dříve. Když se členové Debatního spolku konečně odporoučeli a Edward se diskrétně vzdálil do svého pokoje, Mabel ztlumila světla, něžně vzala Jacka za ruku a odvedla ke klavíru, na němž se sama doprovázela k písním, které mu zpívala tehdy, když k nim začal chodit a zároveň ji přitahoval i odpuzoval svou drsnou mužností a silou. Jack stál opřený o klavír, očarován jejím zpěvem a zmámen jejím jemnou vůní, a Mabel viděla, jak mu oči září láskou k ní, tak jako Jack cítil, jak se její láska k němu ozývá v jejím líbezném hlase, jako by mu slovy sentimentální písně vyznávala, že ho miluje. Ale věděl, že ještě nenadešel čas, aby se on vyznal jí — že si ji nemůže odvést z kultivovaného světa knih, obrazů a hudby, dokud jí nenabídne něco lepšího než obnošené šatstvo a živoření o hladu.

Nazítří ráno četl v oaklandských novinách oznámení, že se pořádají zkoušky pro uchazeče o místa u pošty. Honem běžel na hlavní poštovní úřad, přihlásil se ke zkouškám a absolvoval je s počtem bodů 85,38. Jenže zatím u pošty nebylo volné místo, jinak by Jack byl zanedlouho běhal po oaklandských ulicích s poštáčkou kabelou zavěšenou přes rameno.

Pokud si sehnal nějaké příležitostné práce, nezabraly mu celé dny a nestačily na živobytí pro rodinu. V nedělní příloze sanfranciského listu EXAMINER se dočetl, že nejnížší honorář za příspěvky uveřejněné v časopisech je deset dolarů za tisíc slov. Konečky prstů ho začaly svrbět nedočkávaností, aby už dostal na papír několik napínavých příběhů, a tak ihned zasedl za obyčejný kuchyňský stůl, jež mu Flora postavila v jeho těsném pokojíku, a v tisíci slovech vylíčil svou plavbu v nekrytém člunu po Yukonu. Hned odpoledne to poslal do redakce sanfranciského EXAMINERU. Netušil, že nastupuje literární dráhu, pokoušel se jen vydělat deset

dolarů, aby měl na činži, než dostane pravidelné zaměstnání listonoše. Věděl, že se soustředěným útokem na literární svět musí zatím počkat, dokud si nenaspoří pár set dolarů, nebo až nebude už muset živit víc krků než jen svůj.

Ale jakmile se jeho mozek jednou namlсал psaní, nemohl už bez něho být. Jack se ihned pustil do povídky v rozsahu dvaceti tisíc slov pro časopis *YOUTH'S COMPANION* a délku kapitol si rozpočítal tak, aby každá vyšla na jedno pokračování, jak to vídal u prací uveřejněných v číslech časopisů, jež kdysi čítal ve veřejné knihovně. Ani se nenadál a už měl napsáno sedm povídek z Aljašky, které měl dávno přesně rozvržené v hlavě. Stačilo jen trochu pootevřít stavidla a hned ho strhl proud.

Zaměstnání u pošty nedostal. List *EXAMNER* nejenže mu neposlal deset dolarů, ale ani mu nepotvrdil příjem rukopisu. Jack neměl ani vindru, aby si koupil něco k snědku, a tak dal do zastavárny kolo, které kdysi dostal od Elizy, aby mohl dojíždět do oaklandské vyšší střední školy. A když domácí vymáhal činži a vyhrožoval výpovědí z bytu, Jack odnesl do zastavárny hodinky, dárek od Elizina muže, a pak i nepromokavý plášť, jediné své dědictví po Johnu Londonovi. Když k němu jednou přišel bývalý kamarád z přístavu a přinesl si v novinách zabalený frak, jenže nedovedl přesvědčivě vysvětlit, jak ho nabyl, Jack mu za něj na oplátku dal nějaké své památky z Aljašky a zastavil frak za pět dolarů, které z velké části utratil za známky a obálky, aby mohl své hromadící se rukopisy rozeslat do různých časopisů. Dosud vůbec netušil, že se z něho stává spisovatel z povolání: měl prostě zoufalou nouzi, nemohl sehnat žádné zaměstnání, a tak zatím chtěl zužitkovat své jedinečné nadání v divém úsilí vydělat si na jídlo, než dostane místo u pošty.

Přišla zima. Jack pořád ještě chodil v lehkém letním obleku. Kupec na rohu mu poskytl úvěr do výše čtyř dolarů, ale víc mu už nepovolil; řezník na protějším rohu mu posečkal, dokud dluh nevzrostl na pět dolarů, ale pak mu už nechtěl nic prodat. Věrná Eliza nosila Londonovým jídlo, pokud se bez něho mohla ve své domácnosti obejít, a dávala Jackovi drobné částky peněz na papír a na tabák, protože bez kouření nemohl existovat. Jack ubýval na váze, tváře začínal mít vpadlé, stal se nervózní a popudlivý a nebyl by se už hodil ani za levnou pracovní sflu. Jednou za týden měl příležitost dosyta se najíst u Mabel, ale usilovně se u stolu krotil, aby dívka, kterou miluje, nepoznala, že je

tak vyhladovělý. Stále se však nevzdával skvělých nadějí — nezapomínal, že se v časopisech platí deset dolarů za tisíc slov a že povídky a články, které do nich poslal, mají rozsah čtyř až deseti tisíc slov; kdyby mu něco z nich uveřejnili, znamenalo by to záchranu pro rodinu. Neustále se utěšoval bezděčnou nadějí, kterou si vědomě ani nechtěl připustit, ale která mu byla oporou, tak jako stanová tyč podpírá stan, že mu snad v časopisech otisknou povídek víc. Pak se už spolehne, že si může vydělávat na živobytí literární prací, a nebude z nouze nucen přijmout místo listonoše. Nečekal vysoké honoráře a nebažil po spoustě peněz, doufal jen, že si psaním vydělá aspoň deset dolarů za tisíc slov — počítal, že kdyby mu uveřejnili do poslední řádky všechno, co napíše, nevyneslo by mu to beztak víc než tři sta dolarů měsíčně, ale spíš jen sto padesát.

Časem se do svých povídek tak pohroužil (v usilovné snaze, aby snad nepromeškal příležitost, kdyby mu přece některou někde přijali), že mu bylo zatěžko nechat psaní a posekat někde trávník nebo vyklepat koberec. Rodina žila v žalostné tísní, a jen protože Flora byla tak houževnatá, nezdolná a za dvacet let vytrénovaná častým hladověním, mohla nyní nouzi snášet. Jack z podvýživy zeslábl a dokonce se i rozstonal. Byl už tak ošumělý a znervóznělý, že si musel odřici i ten jediný večer v týdnu, jež dříve vždycky strávil u Mabel. Nevěděl už kudy kam a byl by ochotně třeba zas přihazoval uhlí topičům za měsíční mzdu třicet dolarů. Když tak mýjely dny a Jackovi bylo tělesně i duševně čím dál tím hůř, nejen protože se dost nenajedl, ale protože budoucnost byla tak nejistá, začal znovu pomýšlet na sebevraždu jako tehdy v noci, když spadl do moře s mola v Benicii, a tehdy „na trati“, když propadl trudnomyslnosti. Přiznává se, že by snad byl spáchal sebevraždu, ale nesměl přece opustit Floru a malého Johnnyho. Jackův kamarád z chlapeckých let, Frank Atherton, píše: „Jack už napsal dopisy na rozloučenou. Ale přišel se s ním rozloučit přítel, který se také rozhodl udělat všemu konec.“ Jackovy argumenty, jimiž se příteli snažil sebevraždu rozmluvit, byly patrně tak výmluvné, že jimi přesvědčil i sám sebe.

A pak jednoho bezútešného dne koncem listopadu dostal ráno poštu tenkou podlouhlou obálku z redakce časopisu OVERLAND MONTHLY, věhlasného v celých Spojených státech, jež v San Francisku roku 1868 založil Bret Harte. Sláva! Redakce mu oznamuje, že uveřejní jeho povídku z Aljašky!

Poslal jim „Muže na stezce“ a oni to otisknou! Bleskurychle začal v duchu vypočítávat... povídka má pět tisíc slov... za tisíc slov se platí deset dolarů... v obálce bude šek na padesát dolarů... konečně záchrana!... Teď už bude moci jen psát! Posadil se na kraj postele a roztřesenými prsty dychtivě roztrhl obálku — právě tak se i jeho obraznost třásla dychtivostí, že se mu otevřou skvělé výhledy do budoucnosti.

V obálce nebyl žádný šek. Bylo tam jen formální sdělení, že redakce pokládá jeho povídku za „přijatelnou“ a po uveřejnění mu pošle honorář pět dolarů. Pět dolarů za povídku, kterou psal celých pět dní! Zas jen almužna, zase jen dolar denně, totéž co si vydělal jako nádeník v konzervárně, v továrně na spřádání konopí, v elektrárně, v prádelně! Zůstal sedět na posteli celý roztřesený, zrak měl zakalený, mozek omráčený, tělo tak zesláblé, že se nemohl ani hnout. Byl hlupák, důvěřivý hlupák! Nechal se napálit! Uvěřil tomu článku v nedělní příloze! Vždyť časopisy neplatí za slovo ani penny — vždyť platí penny za deset slov! Z takových honorářů se nemůže nikdo uživit, natož aby uživil rodinu! I kdyby napsal mistrovská díla a kdyby mu vydali všechno, co naškrábe tlustě seříznutou tužkou, nekyne mu vůbec naděje, že by se psaním uživil. Jen boháči si mohou dovolit, aby z nich byli spisovatelé — on ještě rád přileze zpátky k žacímu stroji a ke klepadlu na koberce, aby se jakžtakž uživil, než dostane místo u pošty.

Týž den odpoledne — shodou okolností, která se v jeho životě občas vyskytovala, ale v jeho dílech nikdy — dostal ještě jednu tenkou podlouhlou obálku, tentokrát z redakce literárního časopisu vydávaného na východě s názvem BLACK CAT, do něhož poslal povídku napsanou v tom krátkém, horečném období po odchodu z Kalifornské university a před nástupem do práce v parní prádelně Belmontovy akademie. Nakladatelem a redaktorem časopisu BLACK CAT byl Umbstaetter, který se velice zasloužil o povzbuzení mladých amerických spisovatelů. Umbstaetter Jackovi psal, že jeho povídka je „spíš upovídáná než dobře napsaná“, ale kdyby mu Jack dovolil zkrátit ji ze čtyř tisíc slov na polovinu, Umbstaetter by mu ihned poslal šek na čtyřicet dolarů.

Kdyby mu dovolil! Vždyť tohle se rovná honoráři dvacet dolarů za tisíc slov, tedy dvojnásobku předpokládané sazby! Nenechal se tedy napálit! Může tedy v budoucnu

uživit rodinu prací, kterou si zamiloval! Napsal Umbstaetterovi, že může jeho povídku zkrátit o polovinu, jen když mu pošle peníze. Umbstaetter mu obratem pošty poukázal čtyřicet dolarů. A takhle se stalo, jak píše Jack, že zůstal u spisovatelského povolání.

Šel do zastavárny a vyplatil tam kolo, hodinky a nepromokavý plášť. Kupci zaplatil čtyři dolary a řezníkovi pět dolarů. Pro domácnost nakoupil zásoby potravin, dvanáct dolarů zaplatil za činži na dva měsíce, koupil si obnošený zimní oblek, papír do psacího stroje a několik tužek a vypůjčil za poplatek psací stroj. Večer si ve Flořině kuchyni připravil do košíčku studený oběd a nazítří ráno zjel na kole pro Mabel Applegarthovou. Bok po boku projeli spolu na kolech Oaklandem a za městem silnicí vzhůru na svůj oblíbený vršek v Berkeleyjských kopcích. Byl krásný jasný den s lehce zamíženým sluncem a s toulavými závaný větríku od moře. V úžlabinách mezi kopci se vznášela průsvitná nafialovělá mlha jako barevné závoje. San Francisco se prostíralo na svých pahorcích jako šmouha kouře. Za nimi se temně leskl záliv jako roztavený kov a na něm nehybně stály plachetnice, nebo se nechaly unášet lenivým odlivem. V dálce se hora Tamalpais, sotva viditelná v stříbřité mlze, vzpínala nad Zlatou bránou a ještě dál za ní se nad Tichým oceánem na obzoru kupila mračna a táhla se k pevnině.

Jack ležel ve vysoké trávě vedle první ženy, do které se zamiloval, a pověděl jí, že mu v OVERLAND MONTHLY a v BLACK CAT přijali povídky k uveřejnění. Mabel si uvědomila, jak daleko se Jack dostal za krátké tři roky, radovala se s ním z jeho úspěchů a byla nesmírně šťastná. Jack pokradmu a pozvolna vztáhl ruku za ni, pak ji objal paží a něžně si ji k sobě přivinul. Položila mu ruce kolem teplého osmahlého krku, a jeho síla jako by se vlévala do jejího křehkého těla.

Mabel Applegarthová byla úplným protikladem Jacka Londona. On byl statný, ona křehká. On se vysmíval konvenčnosti, ale konvenčnost byla její živél. On zakoušel strážně v krutém světě drsných mužů, ona žila v ústraní kultivovaného a chráněného domova. On se proviňoval proti ustáleným pravidlům, ona je zachovávala. On byl prudký a překypoval životní silou, ona byla klidná, uzavřená do sebe. On se nenechal ovládnout nikým na světě, ona byla úplně pod nadvládou své matky, sobecké a panovačné,

kteřá hlídala každé hnutí své dcery. Jack věděl, že paní Applegarthová si dělá nároky na vysoké společenské postavení pro svou dceru, že by ji chtěla provdat za bohatého člověka, jehož majetek by byl odškodněním za rodinné jmění, které pan Applegarth po převodu z Anglie do Ameriky investoval do spekulace s osidlováním nových pozemků, ale nakonec o ně rodinu připravil.

Jack vůbec neměl z paní Applegarthové strach. Ani v nejhorším případě by s ní snad nebylo tak zlé pořízení jako s REINDEEREM s plachtami neskasanými, s kormidlem na SOFII SUTHERLANDOVÉ v bouři, s posádkou rychlíku Overland nebo s Běloušovými peřejemi.

Pojídali tlusté obložené chleby, které Jack večer předtím připravil, a dohodli se, že se spolu ihned zasnoubí a za rok se vezmou — to už se Jack domůže tak solidního postavení, že se bude moci oženit. Zařídí si vlastní malou domácnost a budou mít doma police s knihami, obrazy na zdích a klavír, aby Mabel mohla Jackovi hrát a zpívat, Jack bude mít svou pracovnu, kde bude psát napínavé povídky a romány a jeho žena mu bude v rukopisech opravovat případné gramatické chyby. Budou si žít hezky, budou mít inteligentní a zábavné přátele, budou vychovávat své děti, budou cestovat a budou spolu velice, velice šťastni. Zůstali na tom vršku celý den až do jeho nádherného sklonku, užaslí nad zázrakem, jakým je láska, a nad tím divem, že je osud svedl dohromady. Zapadající slunce se potopilo v nakupených mračnách na obzoru a obloha kolem dokola zrůžověla. Mabel si v Jackově náručí tiše prozpěvovala „Sbohem, líbezný dne“. Když dozpívala, ještě jednou ji políbil a pak ti dva zamilovaní, kteří si navzájem vzali do opatrování svůj životní úděl, ruku v ruce pomalu scházeli s vršku a vrátili se na kolech do Oaklandu.

Ze čtyřiceti dolarů z časopisu BLACK CAT zbyly Jackovi všeho všudy dva dolary. Koupil za ně známky, aby mohl znovu rozeslat rukopisy povídek, které mu redakce východních časopisů vrátily a on je pak hodil pod stůl, protože neměl na poštovné a nemohl je nikam poslat. Znovu se pohroužil do psaní, a jakmile rukopisy opsal na stroji, ihned je posílal pryč. Ale první zákmit naděje byl zřejmě klamný. Povídky se mu vracely pokaždé se stejně stručným odmítavým dopisem. Floře pomalu mizely zásoby potravin z polic ve špiži. Hodinky, kolo, nepromokavý plášť a nakonec i teplý zimní oblek putovaly zpátky do zastavárny. Ať si

časopisy platí třeba penny za jedno slovo, nebo třeba dolar — co je mu to platné, když jim nemůže prodat ani větu?

Šestnáctého ledna 1899 dostal přípis, že má nastoupit místo u pošty. Bude to trvalé zaměstnání, vydrží mu na celý život. Plat je pětadesát dolarů měsíčně. Bude mít dost co jíst, koupí si nový oblek místo obnošeného — tohle byl pro tříadvacetiletého mladíka přepych, jaký dosud nepoznal. Mohl by si kupovat knihy a časopisy, po nichž tak prahne. Mohl by se starat o Floru a malého Johnnyho, a jestli bude Mabel svolná, že se k nim přistěhuje, mohou se ihned vzít.

Jack a Flora posuzovali situaci rozumně. Bude-li Jack psát dál, čeká je možná ještě kolik let nedostatku. Ale když přijme místo listonoše, co mu bude platné, že se dosyta nají, že bude mít nové šaty a knihy a časopisy? Nepřišel přece na svět jen proto, aby se krmil a oblékal a občas se pobavil — přišel sem proto, aby tvořil, aby literaturu obohatil skvělými díly. Dokáže snášet strážně umělce, protože při své práci bude prožívat úžasnou rozkoš, proti které jsou všechny ostatní požitky, jako jídlo a hmotné vlastnictví, chabé a malicherné. Ale z čeho pak bude živa Flora? Kdyby byla Jackovi udělala výstup, kdyby sehrála srdeční záchvat, kdyby plakala nebo úpěnlivě prosila, byl by možná ihned přijal místo u pošty. Ale jeho matka, která ho porodila jako nemanželské dítě, která ho v dětství ošidila o lásku a mateřskou něhu, která zavinila, že v jinošských letech trpěl chudobou, zatrpklostí a rozháranými domácími poměry, nyní mu s pevným odhodláním řekla, že musí dál psát své povídky, že si nakonec jistě dobude úspěchu a že ona mu bude pomáhat, ať to trvá třeba bůhvíjak dlouho. Neboť bude-li z Jacka jednou úspěšný spisovatel, pak se Floře Wellmanové, černé ovci v rodině Wellmanových z Massillonu, dostane plného zadostučinění.

Když se Jack už neodvolatelně rozhodl, dal se do práce s prudkým zápallem své rázné povahy. Měl-li z něho být spisovatel, musel ještě získat dvojí: vědomosti a dovednost. Bude-li myslet jasně, bude i jasně a srozumitelně psát — ale může se mu to podařit, když má tak nedostatečné vzdělání a tak zmatené a zpřeházené myšlenky? Budou-li jeho myšlenky za něco stát, bude i jeho psaní za něco stát. Věděl, že musí vyhmátnout vnitřní tep života a že si pak ze svých praktických vědomostí vytvoří vlastní *životní filosofii*, s jejíž

pomocí bude hodnotit, vážit, posuzovat a vykládat, co se děje kolem ve světě. Tušil, že se asi musí vzdělávat v historii, biologii, vývoji lidstva, ekonomii a ve spoustě jiných vědních oborů, aby si tím rozšířil duševní obzor, aby získal větší rozhled a dál posunul meze, jež mu zatím ohraničují pole činnosti. Dopracuje se k životní filosofii, jakou hned tak někdo nebude mít, přiměje se k osobitému myšlení a získá nové a účinnější prostředky, jimiž znuděný svět přinutí, aby mu naslouchal. Nebude mu přece servírovat staré známé „pravdy“ ani pilulky v čokoládové polevě.

A tak se rovnou vrhl na knihy a ze všech stran zaútočil na pevnost vědění. Nebyl už školák, aby si nacistal do hlavy sdostatek faktů ke zkouškám, nebyl ani náhodný mimodoucí, aby si zahříval ruce u planoucích ohňů vědění. Byl vášnivý, roztoužený ctitel, pro kterého každý nový poznání fakt, každá nová vstřebaná teorie, každý popřený starý pojem a každý nově získaný pojem znamená osobní vítězství a je důvodem k radosti. Všechno, co četl, bral v pochybnost, přebíral, zavrhoval a podroboval bedlivému rozboru. Nenechal se oslnit ani zastrašit proslulými jmény. Velcí myslitelé na něho udělali silný dojem jen tehdy, jestliže mu skýtali velké myšlenky. Konvenční smýšlení vůbec nic neznamenalalo pro mladíka, který se doposud prohřešoval proti kdejaké konvenci — sám byl obrazoborec a ikonoklastické názory druhých ho neděsily ani neodpuzovaly. Byl poctivý, byl odvážný, dovedl myslet přímočaře, hluboce miloval pravdu — a to jsou pro vzdělance čtyři nezbytné předpoklady.

Měl sice nedostatečné vzdělání, ale přitom pocít, že má vrozené nadání ke studiu. Vzdělání mu připadalo jako námořní mapa. Nebál se knih, které neznal, věděl, že na té mapě tak snadno nezabloudí — už se s ní obeznámil dost, aby mu bylo jasné, která pobřeží chce probádat. Když se mu dostala do rukou nová kniha, neohmatával ji ostražitě jako zloděj, aby vypátral, jak by u ní vypáčil zámek a vykradl její obsah. Na každou knihu, o kterou zakopl na své pouti neznámou končinou, vrhal se jako dravá šelma, jako hladový vlk připravený ke skoku. Zahryzl se jí do chřtánu, sverepě jí lomcoval, dokud ji nezdolal, a pak schlamstl její krev, zhltnal její vnitřnosti a rozdrtil v zubech její kosti, dokud do sebe nevstřebal veškerou její tkáň a každý její sval, aby se posilnil tím, co v ní je silného.

Vrátil se zas k otci ekonomiky Adamu Smithovi a přečetl

si „Bohatsví národů“, pak se prokousal Malthusovou „Rozpravou o zákonech populace“, Ricardiovou „Teorií distribuce“, Bastiatovou „Teorií ekonomické harmonie“, prvními německými teoriemi o hodnotě a okrajové výrobě, „Podíly na rozdělování“ od Johna Stuarta Milla... a dál postupně všemi příbuznými naukami, až se dostal k zakladatelům vědeckého socialismu, a to už se octl na známé půdě. O politické vědě se začal poučovat u Aristotela, přečetl si v Gibbonovi o zániku a pádu římské říše, sledoval zápas mezi církví a státem ve středověku, vliv Lutherův a Kalvínův na politickou státní strukturu za reformace, až k počátkům moderních politických koncepcí ve spisech Angličanů Hobbese, Locka, Huma a Milla a ke vzniku republikánského státního zřízení, které se mělo vyrovnat s problémy průmyslové revoluce. Z metafyziků prostudoval Hegela, Kanta, Berkeleyho, Leibnitze, z antropologů Boase a Frazera. Biologii už studoval v dílech Darwina, Huxleyho, Wallace a nyní se k nim vrátil s lepším porozuměním. Přečetl všechny sociologické spisy, jaké si mohl sehnat, poučoval se o nezaměstnanosti, cyklickém střídání hospodářských konjunktur a krizí, o příčinách a odstranění chudoby, o poměrech v periferních čtvrtích chudiny, o kriminologii a filantropii, a hloub a hlouběji pronikal do problémů odborářských.

Pečlivě si vypisoval poznámky ze všeho, co četl, a založil si lístkovou kartotéku, aby si ihned mohl vyhledat materiál, jaký právě potřeboval. Ale teprve když začal studovat „První principy“ od Herberta Spencera, přišel na metodu, kterou už tak dlouho hledal, jak si vybírat z různých myšlenkových směrů, jež si už osvojil, aby si mohl vytvořit vlastní životní filosofii. Setkání s myšlením Herberta Spencera bylo pro něho snad největším a jedinečným dobrodružstvím v životě, tak bohatém na rozmanitá dobrodružství. Jednou pozdě v noci po dlouhém studiu děl Williama Jamese a Francise Bacona složil si na dobrou noc sonet a vlezl do postele s knihou „První principy“. Rozbřeskl se den a on ještě četl. Četl pak dál až do večera, jen se přestěhoval z postele na podlahu. Pochopil, že doposud sklouzal jen po povrchu věcí, pozoroval jednotlivé jevy odloučeně, shromažďoval fragmenty a dospíval k zjednodušujícímu zevšeobecňování, takže nenacházel vzájemnou souvztažnost v rozmanitě chaotickém světě zdánlivých vrtochů a náhod. A vida — Spencer mu veškeré vědění dovede utřídit a sjednotit, až ho uvádí v úžas, jak to všechno

dohromady vytváří konkrétní obraz vesmíru, tak názorný jako model lodi, vyrobený námořníky a vložený do skleněné láhve. A v tom vesmíru není místo pro rozmarnou náhodu — všechno se řídí neúprosným zákonem. Ten objev Jacka vzrušil víc než nález zlatého prachu v potoku Henderson — jenže Spencerův monismus se mu nemohl proměnit ve slídu.

Jack byl jako opojen novým pochopením světa, k němuž ho přivedl Herbert Spencer. Všechny skryté jevy mu nyní odhalovaly svá tajemství. Při večeři si uvědomoval, že i v mase na talíři před ním je utajeno záření slunce, a stopoval jeho energii nazpátek všemi proměnami až k jeho zdroji vzdálenému sta miliónů mil a zase zpět až k hybným svalům své paže, které mu umožňují krájet maso na talíři, až vnitřním zrakem uzřel totéž zářící slunce ve svém mozku, který dovede svaly přimět, aby maso rozkrájely — věděl, že obojí má stejnou podstatu, že jedno je obsaženo v druhém, že všechno na světě je svou podstatou spřízněné se vším ostatním, ať to jsou nejvzdálenější hvězdy v nezměřitelném vesmíru, až po myriády atomů v zrnku písku, po němž člověk šlape, a že lidstvo i každý jedinec jsou jen jinou formou živé protoplazmy.

Jack si svou životní filosofii přímo vyvodil ze spisů čtyř myslitelů devatenáctého století: Darwina, Spencera, Marxe a Nietzscheho. Bylo zapotřebí jasného myšlení, odvahy, inteligence a bystrého postřehu, měl-li jim člověk porozumět. Jack potřebnou odvalu a inteligenci měl, a ti čtyři učitelé obohatili jeho život i filosofii. Posílili v něm jeho zdravý pesimismus, jeho lásku k pravdě pro pravdu, vymetli mu z mozku všechno smetí středověku, u nich se naučil chladně neúprosnému, metodickému vědeckému myšlení a poznávání. A Jack měl zas později dramaticky poutavou formou šířit dál jejich učení.

Friedrich Nietzsche emocionálně působil na Jacka z nich ze všech snad nejvíce, protože si jejich životní zkušenosti byly nejpřibuznější. Jack v dětství zakoušel hrůzy spiritismu, tak jako Nietzsche, syn duchovního, trpěl doma v přemrštěné pobožném prostředí. Jack se vzpouzel proti všem projevům zbožnosti, proti víře v nadpřirozené síly, v posmrtný život a v boží nadvládu ve vesmíru. „Věřím, že smrt mě právě tak vyhladí ze světa jako toho komára, kterého ty nebo já rozmáčkne.“ Byl přesvědčen, že veškeré křesťanské náboženství je změt nicotného rituálu a neuvěřitelných dogmat. Věřil, že náboženství, jakékoli a každé nábožen-

ství, je největším nepřítelem lidstva, protože dogmaty uspává mozek jako opiovovou drogou a člověk je pak slepě přijímá, místo aby samostatně myslel — protože lidem zabráňuje, aby uplatnili svou vládu nad zemí, na níž žijí, a obohatili si život. Nietzsche Jackovi potvrdil všechny jeho názory na pověru, pokrytectví a nepravdivost náboženství, a tak skvělou argumentací, že podle Jackova přesvědčení Nietzsche vykopal křesťanské vše hrob.

U Nietzscheho také našel teorii o nadčlověku, převyšujícím všechny ostatní lidi silou a moudrostí, který může zdolat veškeré překážky a ovládnout ztotočené masy. Nauka o nadčlověku hověla Jackově vkusu, protože si sám sebe představoval jako nadčlověka, který nakonec ovládne (vzděláváním, vedením, řízením) lidské masy. Že filosofické dogma o vládě nadčlověka nad ztotočenými masami přivedlo Nietzscheho k přikrému odsouzení socialismu, poněvadž prý znamená nadvládu slabých a neschopných, i odborářství, poněvadž u dělníků prý vyvolává nespokojenost s jejich údělem, to Jackovi zřejmě nevadilo. Nadále věřil zároveň v nadčlověka i v socialismus, ačkoli se ty dva pojmy navzájem vylučují. Jack zůstal celý život individualistou i socialistou: individualismus požadoval pro sebe, poněvadž se pokládal za nadčlověka, světlovlasého dravce, který si podmaní svět... a socialismus požadoval pro masy, které jsou slabé a potřebují ochranu. Ještě kolik let se mu dařilo udržet se pevně na těch dvou intelektuálních ořích, ačkoli se každý vzpínal opačným směrem.

Mimo svůj hlavní cíl získat vzdělání měl Jack ještě naléhavější a prozaičtější úkol: vydělávat si na živobytí. Ve veřejné čítárně oaklandské knihovny dlouhé hodiny pročítal běžná čísla časopisů, porovnával povídky v nich otiské se svými vlastními, které se mu hrnuly z psacího stroje, a luštil záhadu, proč asi tamty byly uveřejněny a jeho nebyly. Žasl, jaká spousta braku se tiskne v časopisech: mrtvý balast, neoživený ani paprskem světla nebo barvitým detailem. Překvapovalo ho, že je tam tolik povídek napsaných svižně a chytře, ale bez života a smyslu pro skutečnost. Život je přece tak prapodivný a podivuhodný, naplněný nesmírnou spoustou problémů, snů a hrdinského úsilí, ale ty otiské výrobky se zabývají jen sentimentálními všednostmi. Jack cítil nápor a sílu života, jeho žár, jeho lopocení a revolty — o tomhle se přece má psát! Chtěl oslavovat průkopníky ztracených nadějí, blouznivé milence, obry, kteří zápasili

pod nátlakem přesily, uprostřed hrůz a tragédií, až se pod údery jejich usilovných pokusů starý svět začal hroutit. Ale tihle přispěvatelé do časopisů, reprezentovaní Richardem Hardingem Davisem (VOJÁCI ŠTĚSTĚNY, PRINCEZNA ALINA), Georgem Barrem McCutcheonem (GRAUSTARK,) Stanleym Weymanem (PÁN Z FRANCIE, POD RUDÝM ROUCHEM) Margaretou Delandovou (JOHN WARD, KAZATEL) Clarou Louisou Burnhamovou (DOKTOR LATIMER, MOUDRÁ ŽENA,) jako by se báli skutečného života, jeho hlubších pravd a podstaty. Lakují život na růžovo, obcházejí jej a své postavy zahalují do závojų padělané romantiky, vyhýbají se prostě všemu, co by tálo do živého.

Po důkladném rozboru usoudil, že to dělají především ze strachu: ze strachu, aby nepohoršili a neurazili redaktory, ze strachu, aby si neodpudili čtenáře ze středního západu, ze strachu, aby si neznepřátelili noviny, vlivné akcionáře, církevní a školské hodnostáře ovládané kapitalisty; ze strachu před silnou, surovou životní skutečností, a hlavně ze strachu před nemilými následky. Jsou falšovatelé skutečnosti, nezáživní a nedomrklí, bezkrevní a bezpohlavní. Nemají osobité myšlení ani nápady, nemají svou životní filosofii ani skutečné vědomosti — mají jen recepty na přelázané limonády. Jsou duševně chudáci, kteří literaturu ochuzují. Pro něho to jsou trpaslci — a jen obři mohou směle změřit své síly v oblasti opravdové literatury. Však on redaktory a čtenáře přiměje, aby ho znali — on zůstane neústupný.

Obracel se ke spisovatelům, kteří si podle jeho úsudku opravdu razili vlastní dráhu: ke Scottovi, Dickensovi, Poeovi, Kiplingovi, George Eliotové, Whitmanovi, Stevensonovi, Stephenu Cranovi. Pohroužil se do díla „triumvirátu géníů“, jak je nazýval: Shakespeara, Goetha a Balzaka. U Spencera, Darwina, Marxe a Nietzscheho se učil myslet — u svých literárních otců Kiplinga a Stevensona se učil psát. Byl přesvědčen, že když má svou životní filosofii založenou na vědeckém determinismu, z jejíhož hlediska může líčit své postavy, a když se dopracuje k jasnému vyjádření myšlenek, které chce vyslovit, budou jeho literární díla moudrá, živá a pravdivá.

K největším divům na světě patřila pro Jacka slova — krásná slova, která znějí jako hudba, silná a britká a řízná slova. Tlusté učené knihy četl vždycky se slovním po ruce, vypisoval si z nich slova na lístky a ty zastrkával za rám

zrcadla, před nímž se holil a oblékal, a přitom se jim učil z paměti; ty lístky si také kolíčky přivěšoval na šňůru k sušení prádla, nataženou přes pokoj, aby pokaždé, když přes něj přejde nebo když pozdvihne oči od stolu, znovu si ta nová slova připamatoval i s jejich významem. Ty lístky také nosil s sebou po všech kapsách, četl si je cestou do knihovny nebo k Mabel, polohlasem si je říkal při jídle, i když se chystal na lože. Když potřeboval do nějaké povídky přesný výraz a vytanulo mu v paměti některé slovo ze sterých lístků, které dokonale vystihovalo, co chtěl vyjádřit, pocítil záchvěv rozkoše v každém nervu.

Ale jak se mají jeho povídky dostat přes kamennou hradbu, za níž zabarikádované redakce ochraňují způsobné čtenáře před nájezdy barbarů ze západu? Neměl nikoho, kdo by mu pomohl, kdo by mu poradil. Neznal se s žádným spisovatelem ani redaktorem, ani s někým, kdo se někdy pokoušel psát. Bojoval sám, v temnotách, nemohl spoléhat na nic než na svou sílu a odhodlanost, na své přesvědčení a na svůj cit pro živé vyprávění. Do článků a povídek vléval svou duši, pak je složil, dal do podlouhlé obálky, zapečetil ji, nalepil na ni známky a vhodil ji do poštovní schránky. Putovalo to napříč kontinentem a po čase to listonoš přinesl zpátky. Jack měl pocit, jako by tam v redakci neseděl člověk, ale jako by to byla důmyslná mašina, která prostě přendá rukopis z jedné obálky do druhé a nalepí na ni poštovní známky.

Čas! Čas! Na ten si věčně naříkal: že nemá čas, aby se mohl učit, aby zvládl své řemeslo, než ho umoří bída o peníze na jídlo a na činži. Den neměl tolik hodin, kolik jich Jack potřeboval na všechno, co chtěl udělat. S lítostí se odtrhoval od psaní, aby se pustil do učení, s lítostí se odtrhoval od svého vážného studia, aby si šel do knihovny přečíst časopisy, s lítostí odcházel z knihovny k Mabel na jedinou hodinu zotavení, kterou si povoloval. Nejtěžší bylo odložit knihy a tužku a zavřít oči, které ho pálily, aby si spaním odpočaly. Byl tak posedlý pracovní vášní, že se omezoval v noci jenom na pět hodin spánku, a těžko snášel pomyslené, že má i tak nakrátko přestat žít. Jedinou útěchou mu bylo, že má budík natažený jen o pět hodin dopředu, že ho finčivé zvonění pak vyburcuje z bezvědomí a on zas bude mít před sebou nádherných devatenáct hodin práce. Byl jen okouzlená duše, duše zachvácená ohněm.

Konečně v lednu vyšla v OVERLAND MONTHLY jeho povídka

„Muži na stezce“. Tím nastoupil svou dráhu jako spisovatel z povolání. Redakce mu nejen neposlala pět dolarů slíbených za uveřejnění povídky, ale ani číslo časopisu, v němž byla otištěna. Roztoužený Jack postával na Broadway před stánkem s novinami, protože neměl v kapse ani deset centů, aby si ten sešit mohl koupit a podívat se, jak se jeho povídka vyjímá vytištěná. Zašel si skoro až na kraj města k Applegarthovým vypůjčit desetiník od Edwarda, vrátil se na Broadway... a číslo časopisu si koupil.

Jackovi přátelé z Debatního spolku Henryho Claye tu dobrou zprávu rozhlásili a kameloti celou svou část nákladu časopisu OVERLAND MONTHLY rychle rozprodali. Jedny oaklandské noviny, které Jacka kdysi zesměšnily jako „kluka socialistu“, hrdě uveřejnily zprávu o panu Jacku Londonovi, mladičkém autorovi, jehož povídka vyšla v úctyhodném měsíčníku OVERLAND MONTHLY. Ačkoli Jack dřel bídu, pořád chodil v obleku jakžtakž sestaveném ze závonů kusů šatstva a nuzně jedl, lidé se k němu začínali chovat docela jinak: viděl, že bude-li z něho úspěšný spisovatel, zaručeně mu odpustí jeho výstřednosti v oblékání, chování a myšlení.

„Muži na stezce“ nepatří k nejlepším Jackovým povídkám z Aljašky, protože je v ní zdůrazněna více fabule než kresba postav a přírody. Ale od té chvíle, kdy Malemute Kid povstane s pohárem v ruce, pohlédne do okna, v němž je místo skla zarámován promaštěný papír na tři coule tlustě pokrytý jinovatkou, a zvolá: „Na zdraví muži, který se teď v noci štve po stezce — ať mu vydrží jídlo, ať se mu psi udrží na nohách, ať mu sirky nikdy neselžou!“, čtenář je uchvácen a stržen vyprávěním a musí povídku dočíst do konce — a je mu jasné, že se v americké literatuře ozývá nový, mladistvý a bujarý hlas.

V OVERLAND MONTHLY mu nabídli královský honorář sedm a půl dolarů za každou další povídku, kterou mu uveřejní. Přestože Jack od nich nedostal ani pět dolarů za svou první povídku, ihned jim poslal druhou, „Bílé ticho“, kterou uveřejnili v příštím, únorovém čísle. Jack byl přesvědčen, že ta povídka patří k jeho nejlepším a že by za ni měl dostat nejméně padesát dolarů, ale spokojil se raději mizerným honorářem sedm a půl dolarů, a to z několika příčin: doufal, že si kritikové a redaktoři na východě jeho povídku přečtou a že je udiví; chtěl Mabel dokázat, že se právem rozhodl pro spisovatelské povolání; vždyť sedm

a půl dolarů, jestli je opravdu dostane, vystačí rodině na živobytí asi tak na měsíc.

Povídka „Muži na stezce“ vzbudila v Oaklandu dojem, že by z Jacka Londona mohl být úspěšný spisovatel. Povídka „Bílé ticho“, která patří k nehynoucím klasickým dílům s náměty čerpanými z ledových končin, musela jeho krajany přesvědčit, že Jack dovede psát. Je to vyprávění prodchnuté láskou, hlubokým citem a velkolepou obrazností, budí v čtenáři soucit a hrůzu a zároveň i pocit rozkoše, jaký ho může uchvátit jen při četbě díla napsaného dokonale uměleckou formou. Jack si přece opsal do svých zápisníků stovky básní: opisoval si je každodenně, aby si zdokonalil schopnost vyjadřování, protože mu ta slova zněla v mozku, jako noty v mozku skladatelově rozeznávají hudební tóny. V „Bílém tichu“ dokázal, že je tím, co by mohlo dost překvapit u mladíka, který vyrostl v Jackově prostředí: opravdovým básníkem. „Příroda dovede všelijakými kousky člověka přesvědčit, že je tvor nepatrný, s ohraničenými možnostmi: neustálým střídáním přílivu a odlivu, rozpoutáním bouře, prudkostí zemětřesení — ale nejužasněji ho ohromí mrtvým obdobím Bílého ticha. Veškerý pohyb ustane, čistá obloha se leskne jako z mědi; nejztluštěnější šepot je jako svatokrádež a člověk zbojácní — hrozí se i vlastního hlasu. Putuje jako ojedinelý živoucí puntík po obrovských rozlohách mrtvého světa a děsí se vlastní opovážlivostí, uvědomuje si, že tam není ničím víc než lidským červíčkem. Bezděky ho napadají podivné myšlenky a tajemnost všech věcí se domáhá, aby byla vyjádřena slovy.“

Jack pevně věřil, že dřinou lze dokázat zázraky, o jakých se víře ani nesnilo. Určil si za úkol napsat denně tisíc pět set slov a nedal si pokoj, dokud je neměl neukázněně nadržápaná na papíře a pak přepsaná na stroji. Než něco hodil na papír, všechno si v duchu důkladně připravil, a pak by ho nic už nebylo přimělo, aby na tom něco změnil, leda jen tu a tam nějaké slovo. Kolo, hodinky, nepromokavý plášť a zimní oblek měl zase v zastavárně a doma se kolik týdnů žilo jen o fazolích a bramborách — jídelní lístek se trochu zpestřil, jen když Eliza přinesla něco z vlastní domácnosti. Jack začal ze zoufalství psát veršované vtipné hříčky v naději, že si v humoristických časopisech vydělá nějaký ten dolar.

Ještě dvakrát dostal tehdy na jaře výzvu z pošty, aby nastoupil místo: jednou se to stalo, když doma už nebyl ani

pětník, ani krajíček chleba. Jack si od Elizy vypůjčil převozné, obrnil se smělou bojovností a nechal se přes záliv převézt do redakce časopisu OVERLAND MONTHLY, která vůbec nedbala jeho prosebných dopisů a neposílala mu ani pět dolarů za povídku „Muži na stezce“, ani sedm a půl dolarů za „Bílé ticho“. Jakmile vstoupil do dveří, ihned pochopil, že OVERLAND MONTHLY není tak blahobytný a rozšířený časopis, jak si představoval. Byl před finančním krachem, udržoval se jen jakžtakž na nohou a poskytoval živobytí jen redaktorovi a administrativnímu řediteli, Roscoovi Eamesovi a Edwardu Paynovi, kteří se po tomto příležitostném setkání stali Jackovými doživotními přáteli. Eames a Payne Jacka radostně přivítali, vřelými slovy ho zdravili jako nadaného spisovatele... a slibovali, že mu hned ráno pošlou pět dolarů. Jen pohrůžka fyzickým násilím ty dva literární „magnáty“ přiměla, že se drobnými z vlastních kapes na vyhladovělého autora složili, aby mu ihned mohli dát alespoň pět dolarů.

Jackova rodina, po uší utopená v dluzích, žila z těch pěti dolarů celý březen. Redakce OVERLAND MONTHLY si od Jacka vyžádala povídku pro dubnové číslo, ale Jack jim odmítl nějakou poslat, dokud od nich nedostane honorář za „Bílé ticho“. Po delším vymáhání mu jej poukázali a Jack jim poslal povídku „Syn vlkův“. V dubnu mu tak v sanfranciském časopise TOWN TOPICS uveřejnili humoristický triolet „Pějme píseň dokola“. Na Floru a Jacka tolik útočili věřitelé a domácí, že povídky o pěti tisících slovech nabízel po dolaru, jen aby si sehnal alespoň pár centů. Literární práce sice posilovala jeho sebedůvěru, ale míval období, kdy dostával těžké nervové záchvaty, kdy u něho nabýval převahy sklon k pochybnostem, hluboko zakofeněný v jeho povaze, kdy si říkal, že ho to všechno zmáhá a že nikdy nemůže mít úspěch.

Květen byl první měsíc velké výhry. Časopis TOWN TOPICS otiskl báseň „Já být jen hodinu králem“, OVERLAND MONTHLY čtvrtou povídku z Aljašky „Muži čtyřicáté mlse“, bujaré vyprávění, které se vyznačuje drsnou irskou bojovností a humorem, časopis ORANGE JUDD FARMER uveřejnil povídku „Na dovolené“ a pan Umbstaetter v časopise BLACK CAT konečně vydal „Tisíc smrtí“. Jack seděl ve svém těsném, špatně osvětleném pokojíku nad těmi čtyřmi časopisy, otevřenými v místech, kde měl vytištěny své příspěvky, prsty si pročesával zcuchané vlasy a šedomodré oči mu jiskřily štěstím. Co mu na tom záleželo, že má doma

zimu, že není čím zatopit, že špižirna je prázdná, že má tváře vpadlé a šaty ošumělé, že si už netroufá k Applegarthovým ze strachu, aby Mabelina matka nepoznala, v jaké žije bídě? Jack a Flora měli odedávna zkušenosti s hladověním, oba byli houževnatí a dovedli snášet bídu, která by pro jiné domácnosti znamenala pohromu. Jack měl povahu strádáním otužilou jako zakalená ocel. Už jako malý chlapec uměl se smíchem čelit neuvěřitelným nesnázím a nebezpečím. A jako dospělý muž by nedovedl být neohroženým vikingem? Uložil si těžký úkol, o jakém se hned tak někomu ani nesnilo — musí se tedy vynasnažit, aby jej splnil, protože žádný jiný protivník než jenom nejnezdolnější mu nestojí za to, aby s ním odvážně změřil síly. Už jako malý chlapec se rád pouštěl do nebezpečných podniků, a byl to už tehdy u něho sklon úplně přirozený. Byl v pravém slova smyslu chrabrý, i když někdy měl nutkání obestírat chrabrost romantickým kouzlem. Asi s takovými pocity a myšlenkami seděl v opojném tichu svého pokojíku nad svou jednoměsíční literární žatvou.

V červnu mu list *Express*, vydávaný v městě Buffalo, otiskl „Z Dawsonu k moři“, vyprávění o tom, jak se v nekrutém člunu plavil devatenáct set mil po řece Yukonu. Časopis *Home Magazine* mu otiskl vyprávění „Peřejemi do Klondiku“ a v *Overland Monthly* vyšla jeho další aljašská povídka „V daleké zemi“. Ale teprve v červenci se mohl pokládat za pasovaného spisovatele, protože mu vyšly povídky a články současně v pěti časopisech — úplný zázrak, když se uváží, že mu bylo teprve třiadvacet let a že začal psát vlastně před devíti měsíci. V *American Journal of Education* mu otiskli dva jazykovědné články o větné funkci slovesa, které svědčily o tom, jak daleko dospěl ve snaze o sebevzdělání, a časopisy *The Owl*, *Overland Monthly* a *Tillotsonův* tiskový syndikát mu uveřejnily každý po jedné povídce.

Jack byl přesvědčen, že tahle parádní žatva si stejně zaslouží oslavu jako uveřejnění jeho prvních dvou povídek, a tak vyplatil v zastavárně kolo, zastavil se pro Mabel a vyjel si s ní do kopců. Ale když jí tentokrát položil k nohám své triumfy, pozoroval, že jeho milá je posmutnělá. Na její přímou otázku se jí musel přiznat, že všech těch pět uveřejněných povídek mu vyneslo jen deset dolarů na hotovosti a že možná dostane ještě sedm a půl dolarů z *Overland Monthly*, kde mu dosud jsou dlužni honorář za dvě už

dříve otištěné povídky. Mabel se zhroutila a dala se do pláče, s hlavou v jeho klíně. Minulo už půl roku, co se zasnoubili, a Mabel si uvědomila, že se při tak bídných výdělcích ze svých povídek Jack s ní nemůže nikdy oženit, že by se nemohli uživit z jeho spisovatelských příjmů. Sama by s ním byla ochotně sdílela chudobu, ale paní Applegarthová jí dala velmi jasné najevo, že se smí provdat za Jacka teprve tehdy, až Jack bude vydělávat na velmi slušné živobytí.

Jack měl s sebou několik svých rukopisných novinek a z těch jí honem něco přečetl, aby jí dokázal, že je pouze otázkou času, než mu blahobytné časopisy na východě začnou uveřejňovat jeho věci. Když Mabel tak důrazně a s takovou sebedůvěrou přesvědčoval, že jeho literární díla jsou pravdivá a silná, nesrovnatelná s ničím, co dosud bylo v Americe napsáno, dodala si konečně odvahy a řekla mu, že se jí jeho povídky nelíbí, protože tak syrově, nešetrně a krutě líčí drsný život, utrpení a smrt... a že si je čtenáři nikdy neoblíbí. Ujišťovala ho, že ho miluje čím dál tím víc... na důkaz ho prudce objala kolem krku a vše ho zlíbala... vždycky ho bude milovat... provdá se za něho třeba ihned... ale ať má proboha rozum a přijme to místo u pošty... nebo se pokusí dostat trvalé zaměstnání jako zpravodaj u některých novin!

Jacka zarmoutilo, že Mabel nemá dost víry v jeho práci, ale nikterak to nezmenšilo jeho lásku k ní. Tak jako ti skleníkoví redaktori na východě byla i Mabel vychována v uhlazeném, chudokrevném, tradičním prostředí. Ale on jim ukáže! On je z té jejich samolibosti vyburcuje! On je poučí, jak má vypadat dobrá povídka!

Vrátil se zas k svému kuchyňskému stolu, ukroutil si nekonečnou řadu cuckovatých cigaret a znovu začal pilně dříť. Vyklepával jízlivé články o třídním boji na téměř psacím stroji a téže pásce jako dobrodružné příhody pro děti; na stejném papíře psal napínavé povídky o hrdinném zápolech na život a na smrt s osudem na zamrzlém Severu i žertovné triolety pro *Town Topics*. Ještě úporněji se vrhal do studia knih a dělal si spousty poznámek o válce, světovém obchodě, korupci ve vládních úřadech a soudnictví, o plýtvání v konkurenčních průmyslových podnicích, o stávkách, bojkotech, hnutí za ženské volební právo, kriminologii, soudobém lékařství, o pokroku v technice a moderních přírodních vědách a zařazoval si takto získaný

materiál do své pečlivě uspořádané příruční knihovny. Ani den nevěnoval méně než šestnáct hodin studiu a psaní, a když mu to dovolil zdravotní stav, přiměl se k devatenáctihodinové pracovní době denně — každý ze sedmi dnů v týdnu. *Dřinou lze dokázat zázraky, o jakých se víře ani nesnilo!*

V měsících usilovné píle měl málo času pro přátele a spolkovou činnost. Mabel s matkou se zatím přestěhovala do San José, městečka v údolí Santa Clara. Ale začínal už mít pocit, že se příliš odtrhl od lidí, jeho povaha především potřebovala živý styk se zajímavými lidmi. Proto přijal s nadšením pozvání nedávno založeného Ruskinova klubu, aby se přihlásil za člena — byla to smetánka liberálů a intelektuálů z oblasti sanfranciského zálivu. Za pár dní se neohlášen zúčastnil večerní schůze místní organizace Socialistické strany, kde ho hlučně a vřele přivítali. Vyzvali ho, aby promluvil, a tak vystoupil na pódium a mluvil o „Otázce maxima“ — pokoušel se dokazovat, že až kapitalismus dosáhne nejvyššího možného stupně vývoje, musí se nutně zesocializovat. Před týdnem o tom napsal článek „Otázka maxima“, koupil jej od něho jeden časopis na východě, ale nikdy jej neuveřejnil. Tím článkem a tou přednáškou se Jack stal uznávaným ekonomem, poněvadž jimi nejen ukázal, jak dokonale ovládá ekonomický výklad dějin, ale také rozsah svých vědomostí z oboru světové politické ekonomie.

Jacka těšilo, jak místní organizace přijala jeho výklad, a uvolil se, že bude řadu nedělí přednášet večer ve vzdělávacím cyklu přednášek, jež hodlala uspořádat. Užasl, když po jeho první nedělní přednášce několik oaklandských deníků uveřejnilo o ní vážné a vlídné komentáře. Tak vida, socialismus a Jack London si společně začínají získávat respekt!

V září, říjnu a listopadu si Jack prorazil cestu do tří nových časopisů — CONCRETE, THE EDITOR A YOUTH'S COMPANION. Jeho přátelé z Ruskinova klubu a z místní socialistické organizace v něm už viděli úspěšného spisovatele. Když neměl v neděli přednášku, jezdil na kole čtyřicet mil do San José za Mabel a v týdnu býval kolik večerů na schůzích, přednáškách a debatách. S Jimem Whitakerem, který se z kazatele stal spisovatelem, a se Strawn-Hamiltonem, anarchistickým filosofem, si jednou večer zajel přes záliv poslechnout Austina Lewise, který měl v Turk Street Templu přednášku o socialismu. Seznámil se na ní s Annou Strunskou, horlivou socialistkou, o níž se pak vyjádřil,

že je nadšenou a nadanou hlasatelkou socialismu. Byla to nepochybně nejduchaplnější žena, jakou v životě poznal.

Anna Strunská, studentka ze Stanfordovy university, byla plachá, štíhlá, citlivá dívka s tmavohnědýma očima a s kučeravými černými vlasy. Pocházela z pionýrské rodiny a domov jejích rodičů byl kulturním střediskem v San Francisku. Slečna Strunská píše, že ji na Jacka upozornili jako na soudruha, který řeční na oaklandských ulicích a vydělává si na živobytí psaním povídek. Když mu byla po přednášce představena, bylo jí prý, jako by se setkala s mladým Lassalem, Marxem nebo Byronem, neboť měla okamžitě dojem, že před ní stojí historická osobnost. Věcně se o tom setkání vyjádřila tak, že se octla tvář v tvář mladíkovi s velkýma modrýma očima, orámovanýma tmavými řasami, a s krásnými ústy — když se srdečně zasmál, ukázalo se že mu chybějí přední zuby. Čelo, nos, oválný obličej a silný krk prý měl jako antický Řek. Jeho postava budila dojem gracie a atletické síly. Měl na sobě šedý oblek a bílou košili s neškrobenou náprsenkou, s límcem na připínání a s černou vázankou.

Mezi Jackem Londonem a Annou Strunskou ihned vzplálo bouřlivé přátelství zpestřované zuřivými spory o sociálních, ekonomických a feministických otázkách. Jack slečnu Strunskou pohoršoval tvrzením, že je sice socialista, ale že kapitalisté porazí jejich vlastní zbraní. Ti lidé si myslí, že socialisté jsou budižkničmové a nezpůsobili slaboši, ale on jim chce dokázat, že socialista může změřit své síly i s nejdravějším kapitalistou, a takovou propagandou hodlá prospět socialismu. Slečna Strunská to považovala za bláhový sen a varovala ho, že opravdový socialista by s něčím takovým jistě nesouhlasil — hromadit majetek a úspěchy, to přece znamená přizpůsobovat se starému společenskému řádu, a kdo zaručí, že to také neznamená do jisté míry se přizpůsobit i jeho duchu a uznávat jej jako nezměnitelnou skutečnost? Jack se tomu dobrosrdečně zasmál a odpověděl, že redakce časopisů, které by ho dnes nechaly umřít hladu, budou později náramně stát o jeho povídky a zaplatí mu za ně pěkné honoráře — a že on z těch kapitalistů vydře každý dolar, který z nich bude moci vypáčit.

Ačkoli měl Jack stále na krku rodinné dluhy a starosti o peníze, život ho nyní opravdu těšil. Vydělával měsíčně deset až patnáct dolarů; okruh časopisů, které uveřejňovaly

jeho příspěvky, se pomalu rozšiřoval; a Jack rád psal, přemýšlel, studoval, porovnával a snažil se čím dál tím líp leccos chápat. V neděli večer přednášel v místní socialistické organizaci na takové náměty jako například „Expanzní politika“; zúčastňoval se večerů pořádaných Ruskinovým klubem, kde už měl přátele, kteří přednášeli na Kalifornské universitě, kteří patřili k různým svobodným povoláním, a hlavně nového pracovníka v oaklandské městské knihovně, který mu nahrazoval starou přítelkyni a inspirátorku Inu Coolbrightovou. Na sobotu a neděli jezdíval do San José k Applegarthovým, předčítal Mabel své rukopisné novinky, uvažoval o jejích kritických poznámkách a na procházkách v lese nebo na pohovce v salóne se s ní pokradmu líbal. Miloval Mabel celou duší, ale nikterak se nepokoušel zapojit ji do svého překotného života v Oaklandu. Zdálo se mu jako rouhání jen se ji představit, jak by se vyjímala v kouři a rámusu na socialistických schůzích. Mabel byla pro něho stále ta chladná bohyně, povznesená nad zápasy a zmatky všedního světa; až se stane jeho ženou, bude u nich roztomile hostit jeho méně divoké a hádavé přátele, a on po návratu z bouřlivých schůzí, rozohněný a zpocený, nalezne v jejím náručí pokojné útočiště, kde se zotaví, uklidní a umírní. Mabel má jistě vlastnosti, jaké potřebuje žena nadčlověka.

Konečně docela na sklonku století Jack London definitivně prorazil — vždyť věděl, že to nevyhnutelně musí dokázat každý, kdo má „víru, pracovní vytrvalost a nadání“. V několika týdnech napsal dlouhou povídku s názvem „Odyssea Severu“, kterou jen tak z opovážlivosti poslal redakci bostonského měsíčníku ATLANTIC MONTHLY, nejnepřístupnějšího literárního časopisu ve Spojených státech, nejzlostnatějšího a nejmodrokrevnějšího. Podle všech předpokladů mu redakce ATLANTIC MONTHLY měla se zděšeným odmítnutím jeho rukopis poslat zpátky. Proto užasl, když dostal podlouhlou obálku pouze s listem, v němž redaktor jeho povídku pochválil, jen ho žádal, aby expozici povídky zkrátil o tři tisíce slov, a nabídl mu honorář sto dvacet dolarů za její uveřejnění. Opět Jack sklesl na kraj postele, rozťresený a se zamženými očima, jako tehdy ráno, když přišla také taková tenká obálka z OVERLAND MONTHLY. Sto dvacet dolarů! To postačí na vyrovnání všech dluhů rodiny, na vyplacení všech předmětů v zastavárně, na zásobení špižirny a zaplacení činže na půl roku předem! Ohromným skokem byl u dveří, vyrazil z nich přes

chodbičku do kuchyně, popadl Floru, zatočil s ní tak prudce, že jí nohy litaly v povětrí, a křičel: „Koukej, maminko! Mám vyhráno! V ATLANTIC MONTHLY mi vydají tu dlouhou povídku! A budou ji tam číst redaktoři všech literárních časopisů na východě! Pak budou také chtít ode mne přispěvky! Teď se nám začne dařit líp!“

Flora Wellmanová přikývla, potouchle se usmála za brýlemi v úzkých ocelových obroučkách a zlíbala svého jedináčka.

Jackovy předpovědi se vyplnily tak hojně, že se mu o takové pravděpodobnosti ani nesnilo. Nakladatelství Houghton Mifflin, které pod svou firmou vydávalo bostonský měsíčník ATLANTIC MONTHLY, znalo z rukopisu Jackovu povídku „Odyssea Severu“ i jiné jeho povídky z Aljašky, které už vyšly v OVERLAND MONTHLY, a nabídlo mu, že je na jaře vydá knižně. Posudek hlavního lektora nakladatelství Houghton Mifflin, podle něhož se rozhodlo o vydání výběru z Jackových povídek, je pravděpodobně prvním kritickým zhodnocením Jackových literárních prací. „Přesprlíš užívá běžné hantýrky ze zlatokopecských táborů a jeho styl ani zdaleka není vytříbený a uhlazený, ale má svěžest, sílu a jadrnost. Živě líčí hrůzy studených krajů, tímy a strádání hladem, radost z lidského společenství v krajně nepříznivých podmínkách a ryzí vlastnosti, které se uplatní v tuhém boji s drsnou přírodou. Čtenář je přesvědčen, že autor ten život zná z vlastní zkušenosti.“

Jack už tedy nemusí přijímat honorář sedm a půl dolarů za povídku, ten honorář, jež mu bylo čím dál tím víc zatěžko vypáčit z časopisu OVERLAND MONTHLY. 21. prosince 1899 podepsal smlouvu a Boston, ta tvrz anglické nadvlády nad americkou kulturou, stal se chťe nechťe kmotrem revolučního převratu v americké literatuře, vyvolaného vpádem námětů z divokého pohraničí: z Kalifornie a z Aljašky. Když se bostonské konzervativní nakladatelství takhle postavilo za Jackovo radikálně novotářské dílo, byla naděje, že se mu dostane spravedlivého přijetí a že bude posuzováno spíš podle svých předností než podle svých odchylek od běžné normy.

Za několik dní seděl Jack zase ve svém pokojíku obklopen rukopisy, registračními lístky, knihami a zápisky pro steré přístří povídky. Za pár hodin se mělo zrodit dvacáté století. Bylo mu, jako by se měl o půlnoci znovu narodit i on, jako by měl přijít na svět zároveň s novým stoletím.

Tuhle noc před stovkami let bláhové lidstvo ještě tápalo v choroboplodných mlhách starověku v domněni, že na světě je všechno předurčeno a nezměnitelné, v pošetilé víře, že ekonomická struktura, morálka, náboženství a všechny stránky života jsou Všemohoucím Bohem provždy zformovány podle nezničitelné šablony a podle neporušitelného principu, že na nich nesmí být nic ani trochu poopraveno, natož pozměněno. Tuto představu neporušitelného světa, kterou neuvědomělým masám vštíplí monarchové a kněží, rozbil Hegel, německý buřičský filosof. Stejně povstali i Darwin a Spencer, aby lidstvo osvobodili z okovů náboženství, z nevědomosti a strachu, z pokrytectví a lži, a Karel Marx lidstvo poučil, jakými prostředky má zlomit svá pouta a vytvořit takovou civilizaci, která bude vyhovovat jeho potřebám. Tuhle noc před stovkami let bylo lidstvo zotročené — a podaří se otrokům od téhle noci za sto let ovládnout svět? Nyní už jsou vybaveni prostředky, jimiž se mohou osvobodit — svět by už mohl být takový, jaký by si jej přáli mít, chybí jim jen pevná vůle. A Jack si umínil, že se přičiní, aby ta kolektivní vůle byla zburcována.

Klidně, rozvážně začal odhadovat své schopnosti, svou práci, kolik za svůj lidský věk může dokázat a jaká ho čeká budoucnost. Měl silný sklon k družnosti, rád se stýkal s lidmi, a přece si ve společnosti připadal jako ryba na suchu. Vlivem prostředí, z něhož vzešel, nesnášel konvenční zdvořilost a bouřil se proti ní. Byl zvyklý říkat, co si myslí, nic méně a nic víc. Už když mu bylo deset let, krutě na něho dolehly strážně, ale neporušily jeho citlivost, jen z ní vyhladily sentimentalitu. Vychovaly ho k praktičnosti, takže se někdy zdál drsný, strohý a neústupný; přesvědčily ho, že rozum je mocnější než obraznost, že člověk vyzbrojený vědou zmůže víc než člověk podléhající emocím. „Berte mě tak, jaký jsem,“ napsal Anně Strunské na počátku jejich známosti, „jako hosta, který se k vám zatoulal, jako stěhovavého ptáka, který na třepotavých křídlech postříkaných mořskou pěnou na kratičkou chvíli zabloudil do vašeho života — jako nezpůsobného, nezdvořilého ptáka navyklého čerstvému vzduchu a nezměrným prostorům, který se v úhledně uspořádaném životě necítí doma.“

Nesnášel okázalost a přetvářku. Lidé ho museli brát tak, jak byl, nebo si ho nemuseli vůbec všimnout. Nosil skoro pořád svetr a chodil na návštěvy v cyklistickém obleku. Jeho přátelé se nad ním už dávno nepohoršovali — ať dělal cokoli, říkali:

„Vždyť je to Jack.“ Nikomu nepodlízal, nikomu nenadbsřhal, neucházet se o ničí přízeň, a přece ho lidé měli rádi a vyhledávali ho, protože, jak to vyjádřila Anna Strunská: „Znáť se s ním znamenalo okamžitě se nadchnout živým zájmem o každého člověka. Svými slovy, svým smíchem a svými názory rozproudil život v každém, s kým přišel do styku — v každé skupině, uprostřed níž se octl, nastalo ihned prudké oživení. Jako by lidi nabíjel elektrickým proudem — jakmile mezi ně přišel, rázem zburcoval jejich bdělost, takže jejich těla a mozky jako by najednou obživly.“

Jeho nejvěťší vášní bylo znát fakta. „Člověče, chci fakta, nezvratná fakta!“ je heslo, které se ozývá v celém jeho životě i dšle. Věřil, že svět spočívá na fyzické základně, poněvadž se přesvědčil, že zpod té duchovní nejednou vystrkuje růžky pokrytectví, klam a pošetilsto. Chtěl slepou víru nahradit vědeckými poznatky: jen přesně fungující a pronikavě bystrý rozum může lidstvo zbavit břemene starověkého boha, může ho sesadit z trůnu a místo něho nastolit lidstvo. Jack byl ateista, nevěřil v žádného boha, ale věřil v lidskou duši. Znal ze zkušenosti, jak člověk může být podlý, ale ze zkušenosti také věděl, jak vysoko se dovede mravně povznést. „Člověk je tak malý, a přece je tak velký!“

Přede vším a vždycky požadoval na člověku zmužilost. „Když někdo snese ránu nebo urážku a nehne ani prstem, aby ji oplatil, dělá se mi z něho zle, i když dovede hlásat nejvznešenější city!“ Opovrhoval každým, kdo nedovede projevit odvalu. „Mít nepřátele je úplně zbytečné. Když jde do tuhého, vraz mu jednu, nebo on vrazí jednu tobě, ale nikdy k němu nechovej zášť. Vyříd si to s ním jednou provždy a odpusť.“ Vůči přátelům byl bezmezně štědrý, bez výhrady se rozdával těm, které měl rád, a neopouštěl je, ani když mu ublížili nebo chybovali. „Neuznávám, že bych měl přestat mít rád své přátele, i když třeba odsuzuji jejich chyby.“

Páteří jeho života byl socialismus. Víra v socialistické státní zřizení mu vlévala sílu, odhodlanost a odvahu. Nečekal, že se lidstvo obrodí za den, a nemyslel, že by se lidstvo muselo znovu narodit, aby socialismus mohl dosáhnout svých cílů. Byl by si přál, aby socialismus pronikal životem postupně, aby se neuskutečnil revolucí a krveprolitím, a dychtivě se hodlal přičinit, aby vzdělané masy uchopily do svých rukou průmysl, přírodní zdroje a otěže vlády. Ale kdyby kapitalisté takový evoluční proces znemož-

nili, pak byl ochoten bojovat za socialismus na barikádách. Což někdy vznikla nějaká nová civilizace bez křtu krví?

Z jeho socialistického přesvědčení organicky vyplývalo, že se hlásil k filosofii, která byla kombinací Haeckelova monismu, Spencerova materialistického determinismu a Darwinova evolucionismu. „Příroda nezná cit, lidskost, milosrdenství. Jsme jako loutky, jimiž si pohrávají mocné nevědomé síly, ale můžeme se přičinit, abychom poznali zákonitost těch sil a dovedli se s nimi nějak vyrovnávat. Jsme slepé hračky v zápolení lidských mas o přirozený výběr... Souhlasím s Baconem, že veškeré lidské poznání vzniká v oblasti smyslových vjemů. Souhlasím s Lockem, že veškeré lidské myšlení je závislé na funkci čivů. Souhlasím s Laplace, že hypotéza o stvořiteli světa je zbytečná. Souhlasím s Kantem, že vesmír vznikl mechanickým vývojem a tvoření je přirozený historický proces.“

Pokud šlo o psaní, doufal, že půjde ve stopách svého mistra Kiplinga. „Kipling dovede proniknout k duši věcí. V něm jsou nekonečné možnosti, prostě nekonečné možnosti. Lidskému duchu a literatuře otevřel nové neohrazené prostory.“ Vyhlásil svou vzpouru proti „chudině americké dívky, která se nesmí urážet a které se nesmí podávat žádná strava méně záživná než mléko.“ Desetiletí, v němž dospíval, poslední desetiletí minulého století znamenalo jeho nejnižší bod, bylo to období neplodnosti a duchaprázdna, v němž měly nadvládu zkostnatělé viktoriánské názory. Literatura byla ze všech čtyř stran obezděna omezenou morálkou středního západu; knihy a časopisy se vydávaly pro čtenáře, kteří Louisu May Alcottovou a Marii Corelliovou pokládali za největší spisovatelky své doby. Bylo těžké tvořit originální díla, smělo se psát jen o lidech, kteří patřili ke středostavovským nebo zámožným vrstvám, ctnost musela vždycky být odměněna a nectnost odsouzena; americkým autorům se nakazovalo, aby psali jako Emerson, aby ukazovali příjemné stránky života a vystříhali se všeho, co je drsné, chmurné, sprosté a skutečné. Americkou literaturu stále svými líbivými poetickými hlasy ovládali Holmes, Whittier, Higginson, W. D. Howells, F. Marion Crawfordová, John Muir, Joel Chandler Harris, Joaquin Miller. Americká vydavatelství stále prodlévala v řídkém a studeném ovzduší vznešených výšin a platila neslýchané vysoké honoráře Barriemu, Stevensonovi, Hardymu, ba dokonce se odvažila vydávat smělé objevitelské (ovšemže redakčně

vykleštěné) spisy Francouzů a Rusů, ale na amerických spisovatelích požadovala, aby se úzkostlivě drželi pseudoromantických klišé, a povolovala jim jen změny v uspořádání pozadí.

V ruské literatuře způsobili převrat Tolstoj a realisté; ve Francii Maupassant, Flaubert, Zola; v Norsku Ibsen; v Německu Sudermann a Hauptmann. Když Jack četl, co psali Američané, a porovnával to s díly Hardyho, Zoly nebo Turgeněva, už se nedivil, proč v Evropě považují Američany za národ dětí a divochů. Časopis *ATLANTIC MONTHLY*, velekněz amerického písemnictví, v téže době otiskoval beletrii Katy Douglas Wigginové a F. Hopkinsona Smithe. „Bylo to všechno tak pokojné a neškodné, protože to bylo úplně mrtvé.“ „*Odyssea Severu*“ měla vyjít za několik dní, ale to už nebude neškodná a mrtvá americká beletrie! Jack chtěl pro literaturu svého národa udělat totéž, čím uměleckou prózu ruskou zrevolucionoval Gorkij, francouzskou Maupassant, anglickou Kipling: předseval si, že ji vynese ze salónního prostředí Henryho Jamese do kuchyní prostého lidu, kde to možná někdy smrdí, ale aspoň to smrdí životem.

V tehdejší americké beletrii nesměla být ani zmínka o třech zakázaných věcech: ateismu, socialismu a ženských nohách. Jack si umínil, že se přičiní o vyhubení organizovaného náboženství, o svržení organizovaného kapitálu, že se přičiní, aby se pohlavní pud přestal vydávat za něco ohavného a sprostého, o čem se vůbec nesmí mluvit, nýbrž aby se na něj začalo nazírat z vědeckého hlediska jako na přírodní sílu, jejíž funkcí je přirozeným výběrem napomáhat zachování druhu. Ale nehodlal se stát jen brožurkovým propagandistou: byl především spisovatel, literární tvůrce. Naučil se vyprávět své příběhy tak obratně, aby se v nich nerozlučně spájelo umění s propagandou.

Měl tedy čtverý záměr, a chtěl-li jej splnit, musel se starat, aby z něho byl jeden z nejvzdělanějších mužů nastávajícího století. Chtěl zjistit, má-li pro svůj herkulovský úkol už nějaký počinek, a začal se rozhlížet po knihách, které měl rozložené po stole a na posteli, z nichž studoval a z nichž si vypisoval poznámky. Ano, je na správné stopě: Saint-Amandova „*Revoluce v roce 1848*“; Brewsterovy „*Studie o skladbě a stylu*“; Jordanovy „*Poznámky k evoluci*“; Tyrellovy „*Kraje poblíž Severní točny*“; Bohm-Bawerkův „*Kapitál a úrok*“; „*Lidský duch za socialismu*“ od Oscara

Wilda; „Socialistický ideál — umění“ od Williama Morrisa; „Budoucí solidarita“ od Williama Owena.

Hodiny v matčině pokoji odbily jedenáctou. Starému století zbývala už jen hodina, než zhyne. Jack si kladl otázku, jaké to bylo století, jaké dědictví po sobě zanechalo Americe, té Americe, která v osmnáctém století povstala jako společenství volně sdružených zemědělských států, v prvních desetiletích devatenáctého století osidlovala divočinu, v jeho středních desetiletích začala vyrábět stroje, stavět továrny a železnice, aby překlenuly pevninu od jednoho konce na druhý, a v závěrečných desetiletích nahromadila tak ohromné bohatství, jaké svět dosud neznal... a zároveň s hromaděním bohatství a technickým rozvojem přikovovala lidské masy ke strojům a uvrhla je do bída.

Ale v novém století budou lidé mít nádherný život! Přírodní zdroje, stroje a vědecké vynálezy musí pak lidstvu sloužit, místo aby lidi zotročovaly. Lidský mozek se naučí znát přírodní zákony a musí čelit nezvratným skutečnostem, místo aby se nechal otupovat náboženstvím pro slabochy a morálkou pro idioty. Literatura a život musí být souznačné.

Bude to nádherná Amerika, kterou synové jeho synů od téhle noci za sto let uzří od svých psacích stolů, u nichž budou zkoumat, co se událo za celé nyní uplynulé století! A on má štěstí, že pomáhá budoucí Ameriku utvářet! Pomůže jí svrhnout okovy tmářského století, které teď právě končí; odmítne nosit šeredný škrobený límec, jenž člověka škrtí u krku, a stejně i ohavné, vznešené škrobené názory, které škrtí mozek a působí člověku trýzeň. Obrátí se zády k zastaralé ideologii devatenáctého století a odhodlaně vkročí do dvacátého, beze strachu, co asi lidstvu přinese. Bude člověkem současnosti a Američanem současnosti. Od téhle noci za sto let mohou na něho synové jeho synů vzpomínat s hrdostí.

Flořiny hodiny odbily půlnoc. Staré století skončilo. Nové začínalo. Jack vyskočil od stolu, natáhl si svetr s límcem až pod bradu, sponkami si na kotnících sepal kalhoty, vzal z kůlny kolo a šlapal si to na něm temnou nocí čtyřicet mil do San José. Může načít nové století líp než svatbou s milovanou dívkou? Mají-li synové jeho synů a po nich i jejich synové od téhle noci za sto let na něho vzpomínat s hrdostí, musí si pospíšet!

V

Paní Applegarthová si Jacka nikdy nepřála za zetě. Nestavěla se přikře proti dceřinu zasnoubení, poněvadž věděla, že sňatek je závislý na tom, bude-li Jack schopen uživit svou ženu psaním, a té možnosti se vůbec neobávala. Když Jack přišel do vily v San José a ukázal Mabel a její matce korekturu „Odysseje Severu“ jako předzvěst, že nový rok bude pro něho doopravdy šťastný, tu si paní Applegarthová najednou všechno rozmyslíla. Ano, dá svolení k jejich sňatku, ano... třeba hned, ale pod jednou podmínkou. Buďto s nimi bude Jack bydlet v jejich domě v San José jako živitel rodiny — pan Applegarth byl mrtev a Edward už s matkou a sestrou nebydlil — nebo si vezme tchyni k sobě do Oaklandu a slíbí, že ji nikdy neodloučí od dcery.

Jack právě před několika dny napsal jednomu příteli, že „musí vydržovat rodinu, a to je pro mladého člověka peklo“. Ale přesto se vyhlídky, že by se musel starat ještě o jednu celou rodinu, tolik nepolekal jako poznání, že paní Applegarthová má svou dceru bezpochyby pevně v kleštích. Došlo mezi nimi k výstupu. Jack prohlásil, že paní Applegarthová nemá právo bránit své dceři v životním štěstí. Paní Applegarthová zas Jacka poučovala, že Mabel je hodné a poslušné dítě, že je své matce vděčna za všechno, co pro ni udělala, a že ji na stará kolena jistě neopustí — takhle mluvila, ačkoli byla zřejmě dvakrát tak silná jako Mabel, kterou si zotročila, aby jí dělala úplnou ošetřovatelku, a ještě doposud na ní požadovala, aby jí nosila snídani do postele.

Mabel seděla mezi těmi dvěma, které oba milovala, bledá a zoufalá, trýzněná jejich čím dál tím prudší hádkou, neschopná přidat se buď k jednomu, anebo k druhému. Vždycky podléhala své panovačné matce a zvykla si už na to tak, že jí to bylo vžitě. Ale křehká dívka, tak slabá, že nebyla schopna ozvat se proti své matce, měla kupodivu v té chvíli tolik síly, že tam seděla mlčky a trpně přihlížela, jak jí matka ničí život a rozbíjí sen o lásku, o tom, jak si s manželem založí rodinu a bude mít děti.

Když se Jack večer vrátil do Oaklandu, rozmrzelý

a nešťastný, přibýlo mu nové břemeno starostí. Flora mu řekla, že už utratila do posledního centu honorář z ATLANTIC MONTHLY. Ráno se Jack vydal na kole známou cestou do zastavárny, s nepromokavým pláštěm po Johnu Londonovi pověšeným na řídítkách, a když zas vyšel na ulici, měl v kapse pár dolarů, ale musel domů pěšky. Ta cesta do zastavárny hned po ultimatu od paní Applegarthové ho přesvědčila, že se ocitl v úplně nemožné situaci. Kdyby se Mabel k němu přistěhovala a sdílela s ním život, nepřibýly by mu zvláště velké výdaje a jejich vzájemná láska by jim pomáhala protloukat se těžkým životem. Ale musel by čekat ještě kolik let, než by mohl vydržovat i svou tchyni. A možnost, že by se paní Applegarthová přistěhovala k Floře, byla naprosto nepředstavitelná — vždyť by netrvalo ani čtyřicet hodin a ty dvě ženské by si navzájem vyškábaly oči. I kdyby byl schopen vydržovat ze svých výdělků dvě domácnosti, bezpochyby ani v jedné by nebyl svým pánem. Copak by paní Applegarthová nechtěla panovat v jeho domácnosti právě tak, jako panuje nad svou dcerou? Mabel by musela na prvním místě být dcerou své matky, a manželkou by mohla být, jen kdyby jí na to ještě zbyl čas. A takové poměry by byly nesnesitelné!

Marně zuřil na panovačnou paní Applegarthovou. Ale ve vzteku si najednou vzpomněl na Mabel, chycenou jako v pasti mezi dvěma silnými jedinci, kteří se spolu rvou o její život. To pomyšlení u něho vzbudilo starostlivý soucit a zlost ho hned přešla — umínil si, že ať by měl zdolat jakékoli překážky, neponechá Mabel na milost a nemilost její matce — že se s ní ožení hned a s paní Applegarthovou si už bude vědět rady. Uklidnil se a už se těšil, jak si všechno dobře vyřeší, ale vzápětí si zas musel chtít nechtě uvědomit, že i kdyby nad paní Applegarthovou zvítězil a zařídil si samostatnou domácnost, Mabel by na to při svém křehkém zdraví stonásobně doplatila. Proto nesmí přivolit, aby se Mabel obětovala — jakmile bude vydělávat dost peněz, zařídí si samostatnou domácnost, ať si tam třeba vládne paní Applegarthová — on se odhodlá snášet i její nadvládu, protože nic už nemůže být horší než to, co teď oba, Mabel i on, musí zakoušet. Ale pak se znovu začal trýznit pomyšlením, že i kdyby takhle ustoupil, stejně by jim to oběma zničilo život, poněvadž manželství přece nemůže být šťastné, když je žena tělem i duší v područí své matky.

Prožíval nejstrašnější zklamání. Jeho láska k Mabel byla

bezmezná, mohla vést k dobrému manželství. Obdivoval se jí a vážil si jí pro její zjemnělou kultivovanost, která jemu chyběla; a protože Mabel byla tak éterická bytost s tak choulostivým zdravím, toužil vzít ji pod svou ochranu a starat se, aby jí nikdo neublížil. Mabel nikdy nemilovala nikoho jiného než Jacka a po něm nikdy už neměla nikoho milovat. Mohla mu být oddanou ženou a mohla mu dát domov, po jakém toužil celá leta svého mládí. Byl zoufale nešťastný, že se mu hatí jeho sny o manželce a domově a dětech, ale i proto, že milovanou dívku nemůže vysvobodit z nesmyslně tragické situace, proti níž je zcela bezmocný, ačkoli ví, že v ní ztroskotá nejen jejich láska, ale především Mabel.

V lednu Jackovi opět zasvitlo slunce, ačkoli ho zatím finančně moc nehrálo. V měsíčníku ATLANTIC MONTHLY mu vyšla „Odyssea Severu“, přestože v každém čísle otiskovali jen jednu až dvě krátké povídky, v REVIEW OF REVIEWS uveřejnili „Hospodaření na Klondiku“ a v YOUTH'S COMPANION „Smělost a vytrvalost“. V dlouhé povídce „Odyssea Severu“ se vypráví o Naassovi, náčelníku Akatanu, jenž jako novodobý Odysseus po celém světě hledá svou ženu Ungu, kterou mu o svatební noci unesl světlovlasý viking. Stejně jako „Bílé ticho“ strhne i tato povídka čtenáře svou tragikou. Na východě byla přijata s nadšenou chválou, protože smělý čin budí v lidech odvahu. V jedněch oaklandských novinách vyšel článek o vzrůstajícím významu spisovatelů, mezi nimiž vyniká obzvláště pan Jack London. Jeho přátelé nezapomínali, co Jack zakusil nedostatku, a neužírali se žárlivostí a závistí, jak tomu bývá s přáteli, když někdo z jejich kruhu má úspěch, jenž přesahuje uznávanou mez: uspořádali na jeho počest večírek a všichni se s ním radovali.

Koncem měsíce si od jednoho přítele vypůjčil pět dolarů, aby mohl vyplatit kolo v zastavárně, a zase si to na něm šlapal do San José. V minulých dnech si připravil argumenty velmi jasné a přesvědčivé, a proto nepochyboval, že jim Mabel neodolá a že se konečně osamostatní. Ale Mabel mu snad ani nerozuměla, protože neustále opakovala jakoby zmámená a omráčená: „Matka mě potřebuje. Neobešla by se beze mne. Nemohla bych ji opustit.“ V roce 1937 řekl Edward Applegarth smutně Jackovi: „Matka byla vždycky sobecká, Mabel se o ni musela starat až do konce života.“

Jack se tak docela nevzdával naděje. Miloval Mabel stále stejně horoucně. Ale přátelil se s i jinými ženami. Velmi často se vídal s Annou Strunskou, u jejíhož stolu bylo při večeři vždycky prostřeno pro přátele, kteří by k ní případně mohli zajít... a Jack si k ní zašel často. Anna také psala povídky a sociologické články. Kritizovali si navzájem své práce, prudce se přeli o všechno možné na světě a navzájem se sobě obdivovali. „Anno, nedopusťte, aby svět o vás přišel, protože by to byl věčný hřích a měla byste to na svědomí.“ V San Francisku byla také novinářka jménem Ernestina, která podle toho, jak se jeví na fotografii, měla dokonalý profil a dábsky chytré oči — a s tou si Jack vyjížděl na „úplně nekonvenční výlety“, jak se rád vyjadřoval.

Přestože v lednu slavil tak skvělé úspěchy, neuveřejnili mu v únoru nikde ani řádečku. Z honoráře, jež dostal z ATLANTIC MONTHLY, splatil dluhy, koupil Floře, Johnnymu i sobě slušné šaty, opatřil si knihy a zaplatil předplatné na časopisy, které potřeboval. V domácnosti nezbyl ani cent a Jack byl nesmírně znechucen. Ponižující hospodářské poměry, které poznal už doma v dětství, ho poučily, že chudoba je stejně zavržitelná jako nadměrné bohatství a že je nepřipustné, aby lidé zakoušeli pokořující bídu. Umínil si, že se bude bez ostychu a důsledně rvát o peníze, že jen bláhoví hlupáci opovrhují penězi. „Chci peníze, totiž věci, které se dají koupit jen za peníze, a nikdy nebudu mít peněz dost. Žít z ruky do úst to není nic pro mne, tomu se budu vždycky bránit. Hlavní je, jak se člověk vynachází, a nikoli z čeho pochází. Pro mne víc peněz znamená víc života. Nabývání peněz nikdy nepropadnu, ale utrácení peněz bude vždycky má vášeň. Mohu-li mít peníze i slávu, tak ať jsem slavný; ale mám-li mít buď peníze, nebo slávu, tak chci peníze!“

Znovu odnesl do zastavárny knihy, časopisy a svůj nový oblek, na který byl tak pyšný. Jako vždy první jeho zastávka cestou ze zastavárny byla pošta, kde si koupil známky a zase rozeslal rukopisy do světa. Když mu obrázkový časopis THE EDITOR nabídl pět dolarů za článek o sedmácti stech slovech, Jacka to urazilo, ale honorář přijal. A s dvojnásobnou chutí se vrátil k své práci. Do té doby psal denně tisíc slov, šest dní v týdnu, a uložil si, že když jeden den napíše méně, musí to příští den vynahradit. Od toho dne si zvýšil úkol na tisíc pět set slov denně, pak na dva tisíce slov, ale víc si už nechtěl ukládat.

„Tvrdím, že má-li člověk udělat dobrou práci, nemůže se mu to podařit, když denně napíše dva až tři tisíce slov. Dobrá práce nejsou stohy popsaného papíru — dobrá práce se staví jako pevná zeď z pečlivě vybraných cihel.“ Pravda, chtěl rychle vydělat peníze, spoustu peněz, ale to neznamenalo, že psal nedbale nebo že polevil v myšlení, ani že se rozhodl psát jiný druh povídek, než jaké chtěl psát. Prohlá-šoval, že je ochoten zaprodat se časopisům tělem duší, jestliže mu dobře zaplatí, ale přesto všechno čas, kdy nepsal, věnoval studiu Drummondova spisu o evoluci, Hudsonova o psychologii, kdejaké knihy o antropologii, kterou si mohl sehnat, a nenechal se odstrašit nezvratnou skutečností, že by třeba za tony článků o evoluci nebo antropologii nedostal od časopisů ani deset centů.

Toužil po penězích, aby se vysvobodil z věčného otročení, ale psal nadšené články o socialismu, ačkoli věděl, že je nikdo od něho nekoupí, a přednášel zdarma na schůzích Socialistické strany v Alamedě, v San José i v jiných malých městech. Nemohl loktem do kapsy, ale jeho přátelé z té doby o něm vyprávějí, že se ochotně vypravil až bůhvíkam, jen když věděl, že se tam sejde s lidmi, s kterými se může pustit do ohnivé diskuse o antropologii. Když poznal Weismannovo radikální učení, že získané povahové vlastnosti nejsou dědičné, byl to pro něho tak vzrušující objev, že nechal vši práci, obešel své přátele s otevřenou knihou v ruce a vykládal jim o tom. Tvrdil sice, že bude třeba psát škváry, jen když za ně dostane zapláceno, ale pak bez ohledu na své tvrzení psal o věcech, v které věřil, a chrlil revoluční články a povídky, jejichž duchovní bratři a sestry stále ještě odpočívali na podlaze pod jeho psacím stolem. Potřeboval peníze, ale nehodlal se snížit k tomu, co redakce za své peníze požadovaly. „Jsem neoblomný. Každý, kdo měl příležitost poznat mě dobře, jistě pozoroval, že nakonec vždycky prosadím svou, třeba to trvá leta. Nenechám se nikým zvíkat, leda jen v bezvýznamných maličkostech a na chvílku. Nejsem umíněný, ale směřuji k svému cíli stejně vytrvale jako střelka kompasu k severnímu pólu. Průtahy, vytáčky, tajný či zjevný odpor, všechno je marné, nakonec musí být po mém. Život je boj, a já jsem na ten boj připraven. Kdybych nebyl tvor s logicky uvažujícím mozkiem, musel bych už propadnout malomyslnosti nebo zdechnout v příkopě u cesty.“

V únoru se v rozmezí několika dní zběhly dvě události,

kteřé se v první chvíli nezdály zvlášť významné, ale měly rozhodnout, jak se bude utvářet jeho soukromý život. Dostal pozvání od paní Ninetty Eamesové, ženy ředitele sanfranciského měsíčníku *OVERLAND MONTHLY*. A za několik dní byl v Oaklandu pohřeb Freda Jacobse, s nímž Jack studoval na universitě. Fred Jacobs se jako dobrovolník přihlásil do španělsko-americké války a na transportní lodi zemřel na otravu konzervovaným masem, dodávaným armádě ziskuchtivými keřasy. Nejdřív byl oběd u paní Eamesové: jeho následky se sice neprojevily hned, ale zato byly trvalejší.

Ninetta Eamesová byla roztomilá, upejpavá, bezdětná sedmačtyřicetiletá žena. Všeobecně se jí říkalo „chudinka Netta“, ale byla to osůbka chytrá a bystrá, která dovedla tajit své záměry, poddajná jako popínavá réva, jemná a sentimentální, ale vůli měla jako z ocele. Její manžel byl vychloubačný slaboch, a tak se řízení ujala paní Eamesová jako hlava rodiny a dosahovala svých cílů jediným způsobem, jež si mohly v osmdesátých a devadesátých letech ženy dovolit, když chtěly ovládat a ovlivňovat své muže tak, aby je nikdo nemohl z toho podezírat.

Pozvala Jacka na oběd, protože o něm chtěla do *OVERLAND MONTHLY* napsat článek. Pozvala také svou neteř, jíž se Eamesovi ujali jako malého děčka a která pak u nich vyrostla. Jmenovala se Clara Charmian Kittredgeová a povahou se tetě podobala, jako by jí z oka vypadla. Byla devětdvacetiletá, stále ještě svobodná, živá a uštěpačná, štíhlá, ale pěkně vyvinutá. Snad paní Eamesová doufala, že se Jack a její neteř jeden druhému zalíbí. Ale slečna Kittredgeová nad Jackem ohrnovala nos, protože byl ošuměle oblečený, a pohoršovala se, že mu teta prokazuje tak velkou pozornost. Když paní Eamesová řekla Jackovi, že její neteř je zaměstnána v kanceláři jako písařka na stroji, slečna Kittredgeová tetu kopla pod stolem do holeně ze vzteku, že na ni prozradila, že si musí vydělávat na živobytí.

Dvacátého února Jack celý rozrušený dočetl korekturu knihy „Syn vlků“, v níž měly prvně vyjít jeho povídky pohromadě, a poslal ji zpátky nakladatelství. Druhý den byl na pohřbu Freda Jacobse a setkal se na něm s Jacobsovou snoubenkou Bessí Maddernovou, hezkou mladou Irkou junonské postavy, s kterou se trochu znal z oaklandské společnosti. Její známí ji měli rádi, velmi si jí vážili a projevovali jí upřímnou účast v jejím zármutku. Nazítří ráno dostal Jack dopis od Mabel Applegarthové, dobré přítel-

kyně Bessiiny, v němž ho Mabel prosila, aby Bessii navštívil a vynasnažil se ulehčit jí nějak její smutný osud. Jack tedy ještě téhož dne večer Maddernovy navštívil.

Bessie Maddernová, sestřenice slavné herečky Minnie Maddernové-Fiskeové, absolvovala dívčí střední školu v San Francisku, pak studovala dva roky na učitelském ústavě a tři roky už vyučovala v alamedské dívčí škole. V době, kdy zemřel Fred Jacobs, dávala soukromé hodiny matematiky žákyním dívčí školy, které zůstávaly pozadu, a studentkám ze střední školy, které chtěly na universitu. Byla to žena fyzicky silná, flegmaticky klidná, celé dny objížděla na kole dům od domu své žákyně v Oaklandu a v Alamedě. Byla trochu starší než Jack, měla teplé smutné oči, orlí nos, velká, ale pěkně utvářená ústa, energickou bradu a černé vlasy s tenkým šedivým pramínkem, jenž se jí táhl od čela k temeni — byl to následek úrazu, jež utrpěla v osmnácti letech. Měla vyrovnanou a přímou povahu a klidné sebevědomé vystupování.

Slečna Maddernová truchlila nad smrtí Freda Jacobse, Jack truchlil, protože neměl zřejmě nejmenší naději, že by se mohl s milovanou Mabel brzy oženit. Oběma byl jejich kamarádský vztah milý a blahodárny — bylo jim spolu dobře. A brzy se Jack scházel se slečnou Maddernovou skoro každý večer. Dávala mu hodiny matematiky a fyziky, protože na tyto předměty nikdy neměl učitele, a on jí zase vykládal anglickou literaturu od samých počátků. V neděli si spolu vyjížděli na kole do sousedního okresu Marin, tam se toulali po lesích a na žhavých oharcích si opékali k večeři kotlety, sladké brambory a kraby a vařili si kávu. A když měl Jack trochu peněz, chodívali spolu na večeři do některé italské restaurace na sanfranciském Severním nábřeží a potom do opery.

Jack pořád jezdil každý týden čtyřicet mil na kole do San José, ale po setkáních s Mabel byl vždycky smutný a zklamáný. Rád se vracel ke klidné a nenáročné Bessii, která mu už opravovala všechny rukopisy a tu a tam vybrousila nějakou neobratně stylizovanou větu. Jeho literární práce se jí líbily a byla přesvědčena, že jednou z něho bude slavný světový spisovatel — v té víře nikdy nezakolísala.

V Jackově bytě v Šestnácté ulici se tehdy scházeli jeho známí, protože se už začínali ucházet o jeho přízeň. „Dělám si bohužel snadno přátele, ale nejsem obdařen schopností, jak se jich zbavit.“ Velmi rád vystupoval v úloze hostitele,

ale venku před domem začínaly cinkat bicykly už tak často, že mu někdy při práci seděli na posteli tři i čtyři kamarádi, kouřili, povídali si o starých časech a hádali se, zda se člověk nutně musí stát pesimistou, když věří v materialismus. Jack nedovedl nechat odejít své hosty nenakrmené, a když mu přišlo pár dolarů z OVERLAND MONTHLY za „Nemožnost války“ nebo z NATIONAL MAGAZINE za „Lekci z heraldiky“, nakoupil do ledničky zásobu kotlet a řízků.

Přátelé z Ruskinova klubu si k němu chodili zakouřit a popovídat, soudruzi z místní organizace Socialistické strany ho přicházeli zvát, aby promluvil na schůzi, bývali u něho staří kamarádi od Yukonu, od rybářské hlídky, pirátských lovců ústřic i trampové „z trati“. „Můj byt má velkou nevýhodu, že si sem lidé za mnou přijdou, kdy jim napadne, a já nemám to srdce, abych je vyhodil.“

Začínalo tam už být příliš těсно, nevešli se mu tam ani přátelé, ani knihy, ani jeho rukopisy, a brzy měl dostat autorský honorář za knihu „Syn vlků“, proto si umínil, že se odstěhuje do většího bytu. Poblíž ve Východní patnácté ulici si s Florou vybrali jednopatrový domek číslo 1130 s velkým obývacím pokojem a prostornou ložnicí, v níž si Jack mohl zařídit i pracovnu. Bylo tam celkem sedm pokojů, které většinou zařídila Flora, ale Bessie Maddernová se přičinila, aby Jackova pracovna byla útulná a hodně barevná. Večer předtím, než se měli nastěhovat, Eliza se slečnou Maddernovou věšely v Jackově pokoji záclony a Jack ležel natažený na koberci s rukama sepjatýma pod hlavou, jak často lehával v noci na přídí SOFIE SUTHERLANDOVÉ. Eliza se otočila pro záclonovou tyč a všimla si, že Jack se zvláštním výrazem v obličeji pozoruje Bessii. V mžiku mu vyčetla v očích rozhodnutí — byla mu vždycky spíš matkou než sestrou, a tak ihned poznala, že se už rozhodl. Proto ji nazítří ráno vůbec nepřekvapilo, když jí řekl, že se hodlá oženit s Bessí Maddernovou.

Vždycky se chtěl oženit s Mabel Applegarthovou nejen proto, že ji miloval, ale protože by se vůbec byl rád oženil. Prožil za svých třiaadvacet let dost a dost a toužil mít děti — už jako tramp „na trati“ se o tom zmínil v deníku. „Ožením se z různých pohnutek a nemám proti manželství ani tu výhradu, že mě bude vázat — vždyť už jsem beztak vázán. I za svobodna musím živit rodinu — i kdybych odjel třeba až do Číny, stejně tomu neujdou. Takhle se aspoň usadím a budu mít víc času na práci. Člověk přece má život jen

jeden, tak si ho musí užít. Mám velké srdce, a jistě to bude čistší a zdravější život, když se sám podrobím kázni a nebudu se už svobodně toulat, kdy a kam se mi zachce.“

Jack a Bessie byli vůči sobě upřímní. Nevyznávali si vášnivou lásku jako romantičtí milenci — věděli oba, že Bessie stále miluje Freda Jacobse a že Jack stále miluje Mabel Applegarthovou. Oba už dříve toužili po manželství. Měli se rádi, byli dobří kamarádi, vážili si jeden druhého a byli přesvědčeni, že si mohou spolu vytvořit dobré manželství a trvalý domov a že vychovají pěkné děti. Byli stejného názoru, že Lásky je velké slovo, ale i dost pružné, takže se do něho vměstná různý obsah. Slečna Maddernová o Jackově nabídce pár dní uvažovala a pak ji přijala.

Jack se nechtěl oženit jako London — neměl na to jméno zákonný nárok a nechtěl svým dětem zanechat tak pochybné dědictví. Proto se Maddernovým svěřil se svým nemanželským původem. Vypravil se s Bessí k jednomu oaklandskému soudci, který byl přítel Bessiiných rodičů, a ten je ubezpečil, že když Jack má své příjmení od narození a podpisuje jím své vydané literární práce, má na ně už zákonné právo.

V neděli za týden ode dne, kdy se Jack rozhodl, dali se s Bessí oddat. Měli tichou svatbu a Flora se jí ani nezúčastnila — tolik ji dopálilo, že ji syn podle jejího domnění opouští. Novomanželé odjeli na kolech na třídní svatební cestu, po návratu si zařizovali domácnost a znovu se pustili do práce. Přátelé v Ruskinově klubu jim na počest uspořádali večeři a v oaklandském EXAMINERU ve zprávě o jejich sňatku stálo: „Nevěsta je krásná a vzdělaná dívka“. A celý Oakland jí tuhle poklonu přál jako právem zaslouženou.

Bessie zas celé dny soukromě vyučovala zaostávající žákyňe a vydělávala si tím dost, aby mohla udržet domácnost v chodu, kdyby to z Jackových příjmů nebylo možné. Večer mu opravovala rukopisy a přepisovala je na stroji, četla knižní novinky, které ho zajímaly, aby s ním o nich mohla diskutovat, opisovala pro něho básně, které se mu líbily, a pak jich stovky vázala do desek z červené lepenky, shromažďovala a vázala mu časopisecké články o ekonomických a politických námětech, zařídila mu temnou komoru a naučila ho, aby si sám vyvolával fotografické snímky. V neděli si na kole vyjízďeli na dlouhé výlety do úrodného údolí San Leandro, kde Jack vyprávěl Bessii o svém dětství na farmě Johna Londona. Jednou si na sobotu a neděli

vyjeli do Santa Cruz, kde si zaplavali v oceánu a podováděli na pláži. Neprožívali spolu opojný sen lásky, ale dobře se bavili a byli si navzájem upřímnými, spolehlivými kamarády. Jack byl zřejmě rád, že se oženil a že si za ženu vybral Bessii. A ta v roce 1937 řekla: „Když jsem si Jacka brala, nebyla jsem do něho zamilovaná, ale brzy jsem si ho zamilovala.“

Manželství jako by Jackovi bylo přineslo štěstí i v jiném ohledu, protože se mu konečně podařilo proniknout do newyorského časopisu McClure's Magazine, kde vycházely dobrodružné povídky pro dospělé. Jack a nakladatel McClure se do sebe úplně zamilovali. McClure si dobytí nehynoucí slávy tím, že platil vysoké honoráře dosud neznámým autorům, „aby ti hoši měli co jíst,“ jak říkával. Uveřejnil Jackovi dvě povídky, „Kurážné ženy“ a „Zákon života“, a napsal mu: „Máme o vás velký zájem a byli bychom rádi, kdybyste nezapomínal, že máte tady v New Yorku vřelý přátelé. Přál bych si, abyste nadále považoval náš časopis za své trvalé útočiště. Když nám laskavě pošlete všechno, co napíšete, uveřejníme vám, co jen budeme moci, a s tím, co sami vydat nemůžeme, vynasnažíme se naložit tak, abyste z toho měl co největší prospěch.“

Srdečnějšího povzbuzení se mladému spisovateli snad ani nemohlo dostat. Jack vzal McClura za slovo, poslal mu celou bednu svých rukopisů a pilně se dal do psaní nových povídek, které už měl zosnovány v mozku. McClure mu ještě uveřejnil „Otázku maxima“ a za všechny tři práce mu zaplatil tak velký honorář, jaký Jack ještě jakživ nikde nedostal. Materiály, které sám nemohl otisknout, rozeslal se svým doporučením do jiných časopisů, a když jich bylo už tolik, že je sám nemohl zvládnout, odevzdal je známé literární agentuře. Tím, že McClure otiskoval Jackovy práce ve svém časopise a že mu dělal takovou reklamu v newyorských nakladatelstvích, začínalo Jackovo jméno pronikat do tamějších literárních kruhů.

Když na jaře roku 1900 vyšel „Syn vlků“, kritika jej ihned zahrnula chválou. Ta kniha zapůsobila jako bomba — znamenala průlom do nového století. Kromě tu a tam nějakého zastaralého rčení nebylo v ní nic z devatenáctého století, které právě skončilo. Ty povídky živelně ohlašovaly novou literární éru. Vědecký přístup k vývojovému boji

mezi odrůdami, nová morálka lidí, kteří si žijí beze strachu, že je pan farář zatratí, smělé líčení nejen toho, co je v životě krásné a dobré, ale i toho, co je kruté a ošklivé a chmurné, uvedení celé řady postav z vrstev, které doposud neměly co pohledávat v uhlazené společnosti povídkových hrdinů a hrdinek, prudký spád děje, surové konflikty a násilná smrt, tedy náměty doposud v beletrii zakázané — to všechno bylo jako odzvánění umíráčku chudokrevné, pokrytecké, sentimentální a únikové literatury devatenáctého století.

Mnoho tehdejších významných kritiků se Jacka bojovně ujalo. Kritik v bostonském *THE LITERARY WORLD* napsal: „Autor dovede zarýt až k samým kořenům jevů,“ v *ATLANTIC MONTHLY* stálo: „Ta kniha nabádá čtenáře k opravdové víře v mužné vlastnosti lidstva.“ Jiní kritikové psali: „Povídky prodchnuté ohněm a citem; autor má vrozené vypravěčské nadání; je to dílo veskrze mužné a mocně působivé, které všestranně svědčí o velkém uměleckém talentu...“ V jedné kritice stálo: „Povídky Jacka Londona mají poetické a tajuplné kouzlo velkolepých severních krajů. Ve všech převládá tragická nálada (na rozdíl od ustálené tradice „happy-endu“), jak je tomu všude, kde člověk musí bojovat proti přírodním živlům. Svě komické i tragické obrazy ze života na Klondiku autor vylíčil s velkou představivostí a dramatičností, takže svým mohutným dojmem působí jako díla Kiplingova. Ale zároveň se v nich projevuje jemný cit a bystrý postřeh i pro subtilnější hrdinské vlastnosti, které jsou u Kiplinga vzácné.“

Vyšla mu první knížka, a už ho tak příznivě přirovnávají k milovanému mistrovi! Ty kritiky ho nesmírně potěšily, ale zároveň ho zlobilo, že kritikové nepochopili Kiplingovu opravdovou velikost, a ihned jim to vyčetl horkokrevným článkem.

Vydání „Syna vlkova“ znamenalo zrození americké moderní povídky. Jejími předchůdkyněmi byly povídky Edgara Allana Poea, Bret Harta, Stephena Crana a Ambrose Bierce, kteří také prolomili konvenční hráze a začali psát opravdová literární díla, ale Jack první psal takové povídky, aby je prostý čtenář, dovedl plně pochopit a ocenit. Až do té doby byly povídky většinou psány jakoby pro staré panny, ale Jackovy byly pro každého, jenom ne pro staré panny — jenže ony je beztak hltaly, ovšem za staženými záclonami a zamčenými dveřmi. Jack je také první, kdo v nich uplatnil vědecké názory dvacátého století a napojil

je vitální energií, která Američanům dopomohla k dobytí celého kontinentu a k vybudování obrovských průmyslových závodů.

Už dávno chtěl Jack vyzkoušet své síly na románu, ale poněvadž trvá půl roku až rok, než se napíše román, a po tu dobu z práce neplynou žádné příjmy, zdála se mu velmi vzdálená možnost, že se jednou soustavně pustí do tak náročného díla. Svěřil se s těmi nesnázei McClurovi, ale ten mu obratem pošty odepsal: „Rádi vám poskytneme podporu, jakou si sám určíte. Jsme ochotni vám pět měsíců posílat na zálohách po 100 dolarech měsíčně, a kdyby vám to nestačilo, budeme vám posílat po 125 dolarech. Mám plnou důvěru, že dovedete napsat silný román. Kdykoli byste potřeboval jakoukoli pomoc, podejte nám laskavě zprávu.“

Jack se tedy začínal na své literární dráze rozbíhat jako jeho RAZZLE DAZZLE hnaný na moři prudkým větrem, a tu mu Bessie oznámila, že je těhotná. Jack měl bláznivou radost a pevně věřil, že budou mít syna. Byl na Bessii vždycky hodný, ale od té chvíle byl k ní až dětinsky něžný, starostlivě o ni pečoval, aby byla zdravá a aby se jí dobře vedlo. Vědomí, že brzy bude otcem, vykříslo v něm novou jiskru a za několik hodin poté, co se mu Bessie svěřila s tou novinou, pustil se do psaní svého prvního románu „Dcera sněhu“.

Ačkoli si dokonale a do všech podrobností předem uvědomil, co je to být vázán manželstvím a živit rodinu, v jedné věci se dopustil typicky mužského přehmatu: nepředvídal, že se v žádné domácnosti nesnesou dvě hospodyně. Flora udělala jeho ženě doma peklo.

Pocitovala hned od počátku jako těžkou křivdu, že ji, jak byla přesvědčena, syn opouští ve chvíli, kdy si začíná vydělávat dost peněz... V dobách nedostatku s ním dělala bídu a nikdy si ani slůvkem nepostěžovala, proto se nyní domnívala, že má nárok na odměnu — a Jack jí místo toho přivede do domácnosti cizí ženskou. Tak dlouho mu vařila a tak dlouho se o něho starala, a teď chce vařit Bessie, teď si Bessie hraje na hostitelku, když si Jack pozve domů přátele, teď je Bessie paní domu. Flora žárlila na Bessii, že ji má Jack radši než ji, měla pocit, že je odstrkována. Trápilo ji to a dostávala zase záchvaty neurastenice. Neustále se s Bessií hádala a ztrpčovala jí život, jak jen mohla. Dvacet let po Jackově smrti si Bessie posteskla: „Měla jsem se snažit,

abych si Floru získala, měla jsem ji obskakovat, měla jsem se k ní chovat jako k paní domu, a mohly jsme se spolu dobře shodnout. Ale byla jsem mladá a chtěla jsem o manžela pečovat sama. A tak mezi námi byly pořád hádky.“

Když se Jack potřeboval soustředit na svízelné kompoziční problémy svého prvního románu, často mu Flora a Bessie křikem v místnosti, kde pracoval, znemožňovaly práci, takže nedovedl napsat ani slovo. Když to doma už nemohl vydržet, utíkal k Elize a úpěnlivě ji prosil, aby honem šla ty dvě ženské utišit. Za pár hodin se vrátil domů a Eliza ty dvě zatím už spořádala, aby měl Jack zase možnost dát se do práce.

Mohl už teď lépe hostit známé, a tak kolem sebe shromáždil zajímavé lidi, kteří k němu obyčejně chodili ve středu večer. Mezi nimi vynikal vysoký atletický George Sterling, nesmírně citlivý muž, o němž Jack napsal: „Mám teď přítele, nejmilejšího na světě.“ Sterling byl zběhlý katolický kněz a vzácný básník, který své verše dovedl prodchnout krásou, citem a vášnivou láskou k pravdě. Byl estét, který se učil u klasiků, rozpolcený mezi láskou k socialismu a pojmáním básnictví jakožto „umění pro umění“ podle názorů Ambrose Bierce, jehož defetistickou filosofii Jack zuřivě potíral. Sterling měl velké nadání pro bohatou metaforičnost a hudebnost slov, ohnivý temperament a pronikavý kritický postřeh a jako upřímný kamarád se hodně přičinil, že si Jack vypěstoval jemnější a obratnější styl. Ke kroužku Jackových přátel tehdy patřil také statný pořízek James Hopper, výtečný fotbalista, s nímž se Jack znal z university a který se rovněž pokoušel psát povídky, kazatel Jim Whitaker, otec sedmi dětí, který se vzdal kazatelství a psal romány, španělsko-indiánský malíř Xavier Martinez a úředník z oaklandské městské knihovny a zakladatel Ruskinova klubu Frederick Bamford s pečlivě přistřiženou kozí brádkou a vytříbenými kulturními vědomostmi. Ze San Franciska přijížděla Anna Strunská, anarchistický filosof Strawn-Hamilton, sociální demokrat Austin Lewis a jiní radikálové z oblasti zálivu. Často u nich bývala na návštěvě i paní Ninetta Eamesová, která s sebou vodila své literární přátele a nosila zprávy z cesty své neteře po Evropě. Všichni zůstávali na večeri a potom se předčítalo z rukopisů, diskutovalo o knižních novinkách a divadelních hrách. Později večer si muži zahráli poker nebo jinou karetní hru o nízké sázky a bylo vždycky hodně zábavy a smíchu. Brzy se střeďeční

večery zavedly jako obvyklé schůzky Jackových přátel a známých.

Hezký a milý mladík Cloudesley Johns, úředník na poště v jednom městečku v jižní Kalifornii, jezdíval k Jackovi na celý týden. Byl to první čtenář, který Jackovi napsal nadšený dopis, když jeho povídka „Muži na stezce“ vyšla v OVERLAND MONTHLY a od té doby si spolu neustále dopisovali. Trampové „z trati“, námořníci, bývalí kamarádi z přístavu, ti všichni si k Jackovi rádi zaskočili na sklenku trpkého italského vína a přátelské popovídání. „Každou chvíli se u mne ukáže nějaký bývalý kamarád z lodi... právě se vrátil z daleké plavby... a těší se na velkou výplatu... Poslyš, Jacku, kamaráde, můžeš mi do zítřka půjčit dva dolary?“ Jack to s nimi obyčejně uhandrkoval na polovinu, dal peníze a zas je nechal odejít. Nesmírně ho obšťastňovalo lidi hostit a po denní práci byl vždycky rád, když se u něho sešlo hodně přátel.

Ačkoli McClure posílal sto pětadvacet dolarů pravidelně každý měsíc, Jackovi už dávno nestačily na vydržování rodiny, zvýšenou životní úroveň a hostění čím dál tím většího přílivu známých a přátel. Musel věnovat práci dvojnásobný počet hodin: dopoledne psal opravdová literární díla a odpoledne ta lehčí pro rychlý odbyt. Tak prodal bostonskému TRANSCRIPTU vyprávění, jak spával na trávníku v parku a zachránil se před uvězněním tím, že strážníkům vyprávěl o Japonsku; v HARPER'S WEEKLY mu uveřejnili článek o aljašském vlčáku, který věrně tahal saně; v sanfranciském časopise WAVE mu vyšel jako úvodník článek o „Expanzi“; a dvě vyprávění, jedno „Jejich alkovna“ ve WOMEN'S HOME COMPANION a druhé „Domácnost v Klondiku“ v časopise HARPER'S BAZAAR; v sanfranciském TOWN TOPICS mu otiskli triolet:

*On si přišel sem
vypůjčovat plech,
když jsem vyšel ven;
ale plech mi šlehl,
než jsem přišel sem —
nezbyl po něm slech.*

A Jack si vydělal dolar!

Četl a pracoval u psacího stroje tak pilně, že někdy nevyšel z domu kolik dní, leda jen pro večerník na vstupní

verandičku. Zhubl a zchoulostivěl — a pozoroval, že čím je choulostivější, tím se stává bázlivější, že se bojí psát o tom, v co věří, že má pochybnosti, zda to, co napsal, také prodá a zda se to bude čtenářům líbit. Vždycky měl pevné přesvědčení, že v zchoulostivělém těle nemůže sídlit zdravý mozek, a tak si koupil těžké činky, každý den, než se posadil ke psaní — jen málokdy později než ráno v šest — cvičil u otevřeného okna a po práci chodil na hon do Berkeleyjských kopců nebo do zálivu na ryby. Tělesně se otužil a zároveň si posílil nervy a vrátila se mu odvaha. V návalu obnovené životní síly napsal dvě povídky: „Nekajícny Jan“ a „Muž s jizvou“. Jsou to jeho první povídky z Aljašky napsané s pravým irským šibeničním humorem a ďábelskou, krvavou ironií.

Přestože „Syn vlkův“ měl dobré kritiky, prodával se dost špatně. A časopisy kromě McClurova platily skoro tak málo, kolik by si na mzdě vydělal nádeník — nanejvýš dvacet dolarů za povídku. Jack věděl, že jako spisovatel je širšímu okruhu čtenářů dosud neznámý a že musí vytrvale psát dál, dokud se mezi ně vítězně neprobije. Prozatím pořád paběrkoval dál honoráře po pár dolarech kde mohl, a když časopis BLACK CAT vypsal povídkovou soutěž a Jack si nemohl vymyslet napínavý příběh, aby vyhrál některou z větších cen, napsal ironickou povídku „Semper Idem“, k níž mu poskytla námět zpráva z večerníku a za kterou získal jednu z podružnějších cen. Když časopis COSMOPOLITAN MAGAZINE uspořádal anketu na námět „Ztráty zaviněné nedostatečnou spoluprací“, Jack odvážně vsadil jednu proti miliónu, poslal do ankety revoluční článek s názvem „Jaké ztráty vznikají společenství vinou konkurenčního systému“ a získal první cenu.

Po měsících ustavičných hádek mezi ženou a matkou si pronajal v téže ulici o pár kroků dál od domova malý domek a přestěhoval tam Floru s Johnnym. Vyhoštění Floru rozzuřilo — vida, syn ji vyhnal z vlastního domu! Jack tím nic nezískal, jen mu přibýly nové výdaje, protože Flora nejen chodila dál k nim do domu a vyvolávala ještě větší mrzutosti, ale ještě k tomu si stěžovala sousedům, kteří bohužel začali šířit pomluvy. Flora si představovala, že si teď může dělat, co chce, a znovu se začala pouštět do všelijakých obchůdků, utrácela peníze od Jacka, aniž kdo věděl zač, a dělala dluhy, které za ni musel platit.

V létě a na podzim Jack pracoval dál na svém románu,

přednášel na velkých schůzích v San Francisku pro místní organizaci Socialistické strany, chodil na schůze, na nichž přednášeli jiní, stal se členem Ibsenovského kroužku, učil se na dvoře šermovat a boxovat a každou středu večer hostil přátele. Už dávno přestal být melancholickým intelektuálem — například se ohromně zaradoval, když na podzim Kalifornská universita porazila v kopané Stanfordovu universitu — ale pořád byly pro něho nejúchvatnějším zážitkem knihy, vrhal se na ně stejně dychtivě jako otrhaný, zanedbaný kamelot, který před čtrnácti lety se stohem novin v podpaždí chodil do oaklandské městské knihovny a prosil slečnu Coolbrithovou a něco pěkného ke čtení. Anně Strunské napsal: „Sedím tady a brečím jako malé dítě, protože jsem právě dočetl ‚Judu prostáčka‘. Když má Hardy na svém kontě k dobru Judu a Tess, může umírat spokojen.“ Tvrdil, že by také umíral spokojen, kdyby vytvořil alespoň jednu dvě knihy, které by na polici mohly směle stát vedle knih, z nichž načerpal tolik potěšení a poučení.

Mezi Jackem a Annou Strunskou se vyvíjel zajímavý vztah. Ačkoli se pořád prudce přeli o biologii, materialismus a socialismus, oba pochopili, že jsou si duševně velmi příbuzní. Asi tak v červenci se v Jackových dopisech Anně začíná ozývat citovější tón. „Zpočátku jsme se navenek hašteřili o malichernosti, ale ve skutečnosti a v hloubi duše jsme vždycky byli zajedno. Bylo mezi námi určité souznění, pod vším se tajila opravdová jednota. Když je nová loď spouštěna na moře, smyčné podpěry pod ní skřípají a sténají, ale moře ani loď to neslyší. A tak to bylo i s námi, když jsme si navzájem vpadli do života.“

Své vážně pojaté literární práce dával napřed přečíst Anně Strunské, jejíž kritické připomínky byly důkazem, že má vytříbený smysl pro duchovní hodnoty. A na oplátku ji Jack povzbuzoval, aby nenechávala psaní. „Ach, Anno, kéž byste svou výbušnou duši s jejími proteovskými náladami zachytila na papíře! Když jsem s vámi, mám pocit, jako by se do mne vlévala nová energie! Anno, čtete si své klasiky, ale nezapomínejte číst i to, co je současné, nová literární díla! Musíte vystihnout, co je v nich moderní, musíte hodnotit jejich formální stránku — umění je věčné, ale formu si musí nalézt každá generace. Anno, nezklamte mě!“

Koncem roku 1900 psal: „Čisté, krásné přátelství? — Mezi mužem a ženou? — Ve všedním světě je to nepředstavitelné, pro svět je to stejně nepochopitelné jako nekoneč-

nost.“ I pro Jacka to bylo zřejmě nepředstavitelné, jinak by po rozchodu s Mabel Applegarthovou přece byl chodil na námluvy do San Franciska místo do Oaklandu. Nechtěl být své ženě nevěrný, ale jeho duše se zamilovala do duše Anny Strunské. Probádali spolu s Bessí určité hloubky, žili spolu v družném kamarádství a vytvořili spolu život, a pro tohle všechno ji miloval. Ale s Annou probádali jiné hloubky, hloubky duchovních oblastí, a pro tohle miloval Annu.

Když byla Bessie v těhotenství odulá a opuchlá, začal se Jack trýznit svými city vůči Anně Strunské. Rád ji charakterizoval jako „ruskou židovku, která náhodou má geniální mozek“. Ale nikdy mezi nimi nepadlo ani slovo o jejich vzájemných citech. „Ach, Anno, vězte mi, že je nejsilnější to, o čem se nemluví. Co je pro mne štěstím? Vy, má drahá, jste mi vždycky byla potěšením a blaženstvím.“ Oženil se, aby se citově ustálil, aby si ve společnosti vydobyl pevnou a trvalou pozici, ale „... právě když se mi otvírá cesta k svobodě, jak se zdá, právě teď cítím, jak se mi svírají a upevňují okovy. A vzpomínám na doby, kdy jsem byl volný, kdy mě neomezovalo nic a mohl jsem si dělat, co srdce ráčilo.“

Nemůže být pochybností o tom, že ho k Anně Strunské poutal upřímný cit, ale zkomplikovaný obavami, zlými předtuchami a touhou po svobodě, protože se v tak mladých letech brzy měl stát otcem a bál se naložit si na bedra ještě nějaké nové a trvalé závazky. Ale co by se bylo asi stalo, kdyby Jack předtím, než dostal ultimatum od slečny Applegarthové, byl napsal Anně: „Co je pro mne štěstím? Vy, má drahá, jste mi vždycky byla potěšením a blaženstvím“?

Pořád psal verše, aby si cvičil vyjadřovací schopnost, hltavě a bez výběru četl soudobou beletrii, aby si osvojil moderní styl; pouštěl se do rozličných pokusů nikoli s úmyslem je prodat, ale aby si rozšířil záběr; psal dlouhé kritické stati o technice povídky a neponechal neopravenou ani jednu větu ve svém rukopise, která mu nezněla hladce a krásně. Když se mu zdálo, že začíná být na svou práci příliš domýšlivý, vyhrabal nějakou knížku starých povídek a hned byl jako beránek! S Cloudesleym Johnsem, který měl akademické vzdělání, si navzájem kritizovali své rukopisné novinky a připisovali k nim na okraj stránek jízlivé poznámky. Johns psal knihu s názvem „Filosofie

tuláctví“ a poslal ji v rukopise Jackovi k posouzení. V Jackově odpovědi je obsaženo jeho spisovatelské krédo: „*Ličíš pohnutý život, romantická dobrodružství a věci, které rozhodují o lidském životě a smrti, věci směšné i dojemné, ale proboha, člověče, takhle se o nich psát nedá! Nevykládej čtenáři filosofii tuláctví. Tu musí vyjádřit tvé postavy svými činy, svým jednáním a mluvením!*“ Studuj Stevensona a Kiplinga a uvidíš, jak dovedou vyloučit sebe a vytvořit lidi živé, kteří dýchají, jak dovedou čtenáře uchvátit, že ti se pak do noci neodtrhnou od jejich knih. V uměleckém díle je hlavní věc atmosféra, a ne autorova osobnost. Piš silnou, působivou dikcí, svěží a živou — piš zhuštěně, a ne obšírně a rozvláčně! Nevpravuj — maluj, kresli, komponuj! *Tvoř!* Lepší je tisíc slov sevřených pevnou stavbou než celá kniha průměrných rozvláčných keců! Sám jdi k čertu! Zapomeň na sebe! A svět si tě bude pamatovat.“

Když v „Dceři sněhu“ Jack dospěl k vyličení jejího domácího prostředí, už věděl, že se mu román nepovedl. Bylo v něm tolik dobrého materiálu, že mohl vystačit na dva dobré romány, a ještě by zbylo dost špatného, aby to vystačilo na třetí, špatný román. V „Dceři sněhu“ jsou už obsaženy jeho dvě velké vady: jedna se projevila hned v tomto jeho prvním románu, a na druhou se přišlo později, když vydal už čtyřicet knih. Jednak je to jeho pojetí o nadřazenosti anglosaské rasy a za druhé jeho neschopnost vyličit perem skutečnou ženu z dělnické třídy, ženu z masa a krve.

Ve Froně Welsově se Jack pokoušel vytvořit ženu dvacátého století, která by byla protikladem ženy devatenáctého století: silnou, ale nikoli tvrdou, inteligentní, ale nikoli nevzhlednou, odvážnou, ale která by neztrácela své ženské kouzlo, a přece by dovedla pracovat a žít a bojovat a myslit a udržet krok s výkvětem mužů. Vyloučil z její povahy všechno, co nemohl u žen vystát: sentimentálnost, nedůsledné myšlení, koketnost, slabost, bojácnost, nevědomost, upírovitou přilnavost a pokrytectví. Pokoušel se vyličit ženu, která by byla důstojnou družkou pravého muže dvacátého století, a přestože zabředl do nebezpečných, neprobádaných vod, málem se mu podařilo vyličit Fronu přesvědčivě. Kdyby byl takhle pokračoval, mohl později v příštích svých dílech vytvořit vzor nové, moderní ženy...

Ale u Frony je nejhorší, že mluví jako některá Jackova sociologická stať a vyznává šovinistické bludy — které

Jack spolykal i s chlupy z Kiplingových románů — o nadřazenosti bílé rasy, o tom, že jí je souzeno, aby měla nadvládu nad rudou, černou i žlutou rasou — této pověře byl Jack poplatný svým vikingovským komplexem. „Bojovné galéry s ostrou přídí a na nich Seveřané s ocelovými svaly a s vyklenutou hrudí, páni moří, zrození živly, vládnoucí mečem a veslem... rasa vládců, kteří přišli ze Severu... slavná rasa, jíž patří dědičná vláda nad celou zemskou polokoulí a nad veškerým mořem! Za tři desítky generací opanuje svět!“

Jack dopustil, aby mu krátkozraká lehkověrnost v anglosaskou rasu porušila jeho socialistické zásady, v něž věřil poctivě a které především chtěl přesně a poctivě vykládat. Právě když oslavoval „rasu vládců, kteří přišli ze Severu“, napsal Cloudesleymu Johnsovi: „Socialismus není ideální řád, který má umožnit šťastný život všem lidem — má umožnit šťastný život jen určitým spřízněným rasám. Má určité spřízněné a favorizované rasy posílit, aby zvítězily v boji o život a dědičně vládly nad zemí, na níž podřadnější a slabší rasy časem vyhynou.“ Tohle prostřednictvím Kiplinga hlásal Nietzsche a bylo to zároveň falšování Karla Marxe.

Kdysi Jack statečně odmítl mzdu listonoše, která znamenala pohodlné a trvalé hmotné zabezpečení, a dal přednost nejisté životní dráze spisovatele. A nyní mu k živobytí nestačilo měsíčně sto padesát dolarů, tedy částka, o níž se mu před necelým rokem ani nesnilo. Když přišel poštou šek, čekala už dlouhá řada věřitelů, aby inkasovali peníze. Jeho finanční bilance za dobu mezi vánocemi a Novým rokem obsahuje tyto položky: půjčku Jimu Whitakerovi; zaplacené účty za jednoho přítele, který při nehodě utrpěl zlomeninu obou nohou v kotnících; jedenačtyřicet dolarů na vyrovnání Flořiných naléhavých a dávno splatných dluhů; peněžní dar tetě Jenny, které hrozilo, že přijde o domek, aby mohla zaplatit anuitu z hypotéky a dlužné daně; a nakonec jedinou trapnou položku, totiž odepření půjčky Cloudesleymu Johnsovi, aby mohl dát výpověď z místa na poště v poušti, protože Jack byl sám nucen vypůjčit si peníze na domácnost. A Bessie měla do týdne porodit!

Bessie píše, že soukromě vyučovala své žákyně až do dne, kdy se jí ráno narodilo dítě. Nějakou dobu to vypadalo, jako by se dítě mělo narodit 12. ledna, právě v den Jackových pětadvacátých narozenin, ale Bessie dostala porodní

bolesti teprve patnáctého ráno. Když věděla, že přišla její chvíle, poslala pro lékaře, který si k ní tolik pospíšil, že zapomněl vzít s sebou anestetický prostředek. Jack musel jít koupit láhev chloroformu. Cestou domů se tak prudce hnal na kole, že s něho spadl, láhev rozbil a pořezal se na ruce. Bessie porodila holčičku, která vážila devět liber, ale po porodu se rozstonala a byla dlouho nemocná. Jack nedovedl před ženou utajit zklamání, že se jim nenarodil syn.

McClure se sice rozhodl, že „Dceru sněhu“ ve svém časopise neuveřejní, ale pořád Jackovi posílal každý měsíc šek na sto pětadvacet dolarů. „Jsem také ženatý a vím, že i brambory stojí peníze, a tak vám posílám...“ Po dokončení románu se Jack znovu věnoval psaní povídek. Zklamání, že nemá syna, po týdnech poněkud polevilo a zamiloval si svou dcerku Joanu, která mu byla hodně podobná. Teta Jenny se přistěhovala k Londonovým, aby mohla o holčičku pečovat, stejně jako před pětadvaceti lety na Bernal Heights pečovala o jejího otce.

Jak se Jack sám přiznává, oženil se s Bessí, poněvadž věřil, že mu bude rodit zdravé děti. A nezmýlil se. Oženil se s ní z živelné touhy, aby se vyplnila prázdnota, kterou oba v životě pociťovali, a aby se spolu mohli vrhnout do prudkého proudu žití. Bessie byla přesně taková, jaká se zdála: věrná a oddaná, mírná a inteligentní, ochotná sdílet s ním jeho práci i strážně. Měl radost, že je otcem, a byl jí za to upřímně vděčný. Ale někdy ve chvílích únavy se proti ní vzpouzel právě pro ty vlastnosti, které si u ní cenil a pro které si ji vyvolil. Byl neposedný jako rtuť a horkokrevný, rád se nechal unést svou vznětlivou povahou, chtělo se mu žít radostně, divoce a prudce, jásavě vzlétal do výšin a upadal do nejhlubšího zoufalství. Takové záchvaty duchovní prostopášnosti s ním Bessie nemohla sdílet — byla citově vyrovnaná, klidná, spolehlivá, neměla prudký temperament, ani nepodléhala vrtkavým náladám. Když pracoval a snažil se dokázat, co si předsevzal, cítil vůči ní vděčnost, ale když práci skončil, mívával záchvaty vzpoury, toužil zdvihnout kotvy a s časným ranním odlivem vyplout na záliv. A tu tesknil po bývalé svobodě a litoval, že nemá právo odejít někam jinam, k jiné ženě. Prvně v životě se nemohl rázem zbýt svých závazků a vydat se na dobrodružnou toulku.

V takových chvílích psal Anně Strunské: „Když tady tak sedím a shromažďuji si materiál, třídím jej a pořádám, píši

povídky pro chlapce se zákeřně utajeným mravním naučením, když denně naklepu na stroji tisíc slov, když se rozčileně ohrazuji proti námitkám, jimiž je kritizováno mé biologické hledisko, když si vás žertem dobírám a když se směji, ačkoli je mi do pláče — tohle přece nemůže být náplní života! — tu se ptám: jsou na světě dvě duše, které si mají navzájem tak málo co říci a které se k sobě tak málo hodí?“

Řekli si, že budou psát deník svých duševních a intelektuálních prožitků. Dají mu název „Listy Kemptona a Wace“: Jack měl být Wace, Anna měla být Kempton a měla obhajovat poetické, duchovní zdroje lásky proti Jackovým vědeckým tezím o biologickém vývoji. Takhle budou spolu prožívat vášnivé a poetické duševní rozkoše, aniž někomu ublíží a prohřeší se proti společenským zákonům. Jack bude obhajovat své manželství s Bessí a zároveň bude z něho unikat.

Plnil tedy u psacího stolu dvojitý úkol, ale vždycky si ještě vyšetřil čas na přednášky o trampech v alamedské organizaci Socialistické strany a v sanfranciské Akademii věd o „Ztrátách zaviněných konkurenčním bojem“. V místním tisku se o jeho přednáškách referovalo uznale. Když měla mladá Socialistická strana vybrat kandidáta do voleb oaklandského starosty, prvního kandidáta, kterého si troufala postavit, koho měla poctit tak velkou důvěrou, ne-li svého známého člena, pana Jacka Londona? Kandidaturu přijal a řekl: „My, socialisté, působíme v lidském společenství jako kvas tím, že hlásáme svou velkou a stále rostoucí víru v zespolečnění majetku. To my, socialisté, jsme svou propagandou staré politické strany donutili, aby pro uklidnění všeobecné nespokojenosti obětovaly určité třídní výsady.“

Ve své volební kampani v Oaklandu dokazoval, že socialismus je pro kapitalismus jako žhněná košile, že neustálým drážděním kapitalisty nakonec přiměje, aby si vykoupili určitou úlevu zavedením vyšších mezd, kratší pracovní doby a výhodnějších pracovních podmínek. Dělnické odbory i neorganizované dělníky naléhavě nabádal, aby hlasovali pro socialistickou kandidátku a tím dokázali, že jsou dost silní, aby mohli úspěšně vyjednávat se svými zaměstnavateli.

Ale dělníci byli vůči jeho ekonomickým argumentům hluchí. Stál při něm jen „intelektuální proletariát“. Mezi občany v Oaklandu a v Alamedě získal pro svou mírnou Utopii jen dvě stě pětáctýřicet hlasů.

V květnu mu vyšla v Pearsonově magazínu povídka

„Midasovy uši“, která v americké literatuře znamenala stejnou revoluci jako před rokem „Odyssea Severu“. Takový zjev jako socialistický beletristický spisovatel byl do té doby ve Spojených státech něčím neznámým — nikdy se tam nikdo takový nevyskytl. Ale Jack se jakživ nestaral o to, zda už má nějakého uznávaného předchůdce — umínil si, že bude socialistickým spisovatelem, přestože v jeho době k tomu bylo zapotřebí opravdu velké odvahy. V této povídce Jack prvně líčí světovou organizaci veškerého proletariátu tak mocnou, že ji nemůže zdeptat ani policie, ani státní milice, ani vláda v žádné zemi — organizaci, která se násilím zmocní bohatství v celém světě. „Midasovy uši“ snad nejsou první proletářskou povídkou vydanou v Americe, ale jistě to byla první proletářská povídka uveřejněná v tak rozšířeném časopise, který se četl všude ve Spojených státech. Pearsonův magazin se samozřejmě neprohřešil kacírstvím a neuveřejnil Jackovu povídku pro její socialistickou tendenci, ale pro její hrůzostrašnou napínavost — Jack byl dokonale vypravěč a mohlo se předvídat, že svými utopistickými představami o socialismu čtenáře strhne stejně jako fantastické romány Julese Vernea.

Po „Midasových uších“ napsal Jack povídku „Debsův sen“, v níž předpověděl sanfranciskou generální stávkou v roce 1934, a román „Železná pata“, v němž prorokuje vzrůst a hrůzy fašismu. Po jeho smrti kritikové jen máloco z jeho díla hodnotili shodně, ale jedno mu přiznali nesporně: že Jack London je otcem americké proletářské literatury. V roce 1929 redakce časopisu *New Masses* napsala prostými a pravdivými slovy: „Skutečně proletářský spisovatel nemá jen psát o dělnické třídě, ale dělnická třída ho také musí číst. Skutečně proletářský spisovatel nemá jen čerpat látku ze života proletariátu, ale jeho dílo musí být prodchnuto ohnivým duchem vzpoury. Jack London byl skutečně proletářský spisovatel — první a doposud jediný geniální proletářský spisovatel v Americe. Dělníci, kteří čtou, ti čtou Jacka Londona! Je to jediný autor, kterého čtou všichni — jejich jediný společný americký spisovatel. Čtou ho průmysloví dělníci, zemědělská dělníci, námořníci, horníci, kameloti, a čtou ho znovu a znovu. Je to nejoblíbenější spisovatel americké dělnické třídy.“

Středeční schůzky byly stále zlatým hřebem jeho týdne. Přátelé se k němu začínali trousit už odpoledne, a poněvadž

Jack odjakživa rád luštil hádanky, nosili mu různé skládan-
ky, jinotaje, mechanické hlavolamy a desky, po nichž se
musely kuličky nebo míčky skutálet do dolíčků nebo otvorů.
Bessie pilně prohlížela časopisy a vystřihovala z nich reklam-
ní kupóny na všechny hlavolamy, karetní hry a zábavné
hříčky. U stolu bývalo patnáct až dvacet hostů a po večeři
si hráli na zvířátka nebo na sochy, vymýšleli šarády, pokou-
šeli se vyvléknout provlečené ocelové kroužky, pít vodu ze
sklenice s dírkou u dna tak, aby jim voda nevytekla za límec,
nebo si navzájem potají strkali do kapes myš. Neustále se
ozýval bouřlivý smích a Jack se staral, aby neutuchal,
protože se rád smál a chtěl se smát co nejvíc. Neměl radostné
dětství, proto si hleděl užít hodně legrace.

Kolem velkého kulatého jídelního stolu se zuřivě přeli.
Jack věděl, čím je kdo z nich zranitelný, a dráždil je polo-
vázně míněnými poznámkami, až se kolem stolu rozpoutala
pravá bitva. K jeho kroužku patřilo několik novinářek,
hudebníků a spisovatelů a po večeři se hrálo na klavír,
zpívalo a tančilo. Clara Charmian Kittredgeová, neteč
paní Ninetty Eamesové, se vrátila z Evropy. Byla znamenitá
pianistka a Jack si rád sedal vedle ní na lavičku k pianu,
když hrála a zpívala.

Koncem večera, když se společnost utišila, přinášel si
z pracovny rukopisy, co za týden napsal. Seděl v kožené
lenošce v ztemnělém pokoji a jen při mihotavé záři ohně
v krbu předčítal a přátelé mu pozorně naslouchali. Pak
následovalo pár hodin vážné literární diskuse a pak zase
Jack začal nějakou legraci: vytáhl karty a navrhl třeba
hru, při níž se mohli hodně nasmát a pobavit. Smál
se bouřlivě pokaždé, když se ve hře štěstí obrátilo,
a každá výhra i prohra ho vzrušila jako malé děčko. Hosté,
kteří chodili na jeho pravidelné střední večírky, na ně
dosud vzpomínají jako na nejhezčí a nejzábavnější večery,
jakých si užili.

Pro ty, kdo rádi pili, bylo vždycky pár lahví zatrpklého
italského červeného vína, ale ani kapka whisky. Jack nechal
už před osmi lety pití nadobro. Na cestě ke Klondiku si
nesl přes Chilkootský průsmyk láhev pravé skotské whisky,
ale otevřel ji teprve po půlroce, kdy potřeboval whisky pro
pacienta a doktora: půl jí dal vypít doktorovi Harveyovi
a půl kamarádovi, kterému doktor amputoval nohu. Pacient
to přežil.

Brzy po Novém roce přišel návrh od McClura, že chce

vydat druhou knihu Jackových povídek z Aljašky. Vyšla v květnu s názvem „Bůh jeho otců“. Ani jedna z těch povídek se nevyrovná skvělým povídkám z knihy „Odyssea Severu“, ale jako celek mají vyrovnanější úroveň. Jack v nich ještě důsledněji uplatnil svůj revoluční povídkářský styl a vyloučil z nich všechno nepodstatné, všechny marcipánové příkrasy. Strohou formu přesně přizpůsobil ději. V těchto povídkách dokázal, že je silnější takové literární dílo, jehož námětem je hrdinné vyzývání smrti, nežli to, kde je zpracován milostný příběh. Některým kritikům se jeho nové povídky tolik nelíbily jako předešlé, ale většinou byly v tisku přivítány nadšeně. V *COMMERCIAL ADVERTISER* stálo: „Ty povídky by se měly číst, měly by si získat široký okruh čtenářů, protože představují nový směr v americké beletrii, který je hoden následování,“ a v červenci roku 1901 se o nich psalo v *NATION*: „Povídky *Bůh jeho otců* jsou živé, mají pevnou stavbu a dramatické napětí. Někdy jsou drsné, většinou mají dost poutavé náměty, bez ohledu na vkus dnešních čtenářů. Ale kdo hledá v knize zajímavý děj, napínavý a vzrušující, jistě si je přečte.“ V jiných časopisech se psalo takto: „Nejskvělejší autor povídek u nás, jakého jsme neměli od smrti Poeovy“... „Nový Kipling se nám zrodil na americkém západě“... „Vytěžil na Aljašce to, co Bret Harte vytěžil v Kalifornii“... „Nesmírně napínavé“... „Silné a mocně působivé... pravdivé, věrné životu... prvotřídní vypravěč... rozený povídkář... bystrý postřeh pro realitu... čisté, mužné povídky s prudkým dějovým spádem... plné zdravého optimismu... dávají nám novou víru v mohutnou vitalitu našeho národa“. Jiní kritikové zase povídky odsuzovali jako brutální, vulgární a nepříjemné, napsané neuhlazeným, nezjemněným stylem.

Redakce sanfranciského listu *EXAMINER* vyslala reportéra a fotografa k Jackovi, který se před nějakým časem s rodinou přestěhoval do fantasticky vydekorovaného domu Felixe Piana. V *EXAMINERU* chtěli uveřejnit velký interview s Jackovou fotografií v jeho pracovně. Felix Piano byl výstřední italský malíř a vyzdobil svůj dům sádrovými arabeskami, vázami, reliéfy šelem, andělů, ďáblů, dryád, cherubínů, kentaurů a rozkošnických nahých žen hovicích si pod pergolami porostlými vinnou révou s hrozny — právě takovými rokokovými dekoracemi, jaké Jack v literatuře vždycky zavrhoval. Piano se octl v peněžní tísní a nabídl Jackovi větší část svého domu zdarma na oplátku

za stravu. Fasáda domu byla neuvěřitelně nevkusná, ale místnosti byly velké a pohodlně zařízené.

Interview v EXAMINERU Jacka proslavil v celé oblasti sanfranciského zálivu, ale jinak mu sláva moc nevynesla. Jack dostával od nadšených ctitelů tlusté dopisy. Obzvláště u žen vzbudil interview s Jackovou fotografií zřejmě velký zájem — začaly mu psát a žádaly ho o všemožné laskavosti. Jedna žena se odvolávala na doporučení duchovního ze své farnosti a navrhovala Jackovi, aby s ní zplodil dítě, protože by chtěla, aby po něm zdědilo tělesnou dokonalost a inteligenci. Jack sice upřímně souhlasil s názorem té paní, pokud šlo o biologický výběr, ale přesto její návrh odmítl.

Byl zle zadlužen: v obchodech, v zastavárně i u přátel. McClure si honorář za knihu „Bůh jeho otců“ ponechal jako úhradu za vyplacené zálohy, takže Jack nedostal na hotovosti nic. Peníze, které mu McClure měsíčně posílal, utratil Jack už předem, a přestože posílal povídky a články do podružnějších časopisů, nedostával žádné honoráře. Literatura byla velmi povážlivé zaměstnání: redaktorům trvalo měsíce, než se rozhodli něco uveřejnit, a pak to zase trvalo měsíce, než poslali honorář. Jacka tenhle systém dopaloval — když si člověk koupí boty nebo zeleninu, musí za to zaplatit hned, proč tedy vydavatelství také nezaplatí ihned za uveřejněné literární příspěvky? Takle bezohlednost vůči člověku, který přece musí za svou mzdu kupovat životní potřeby pro rodinu, ho tolik zlobila, že si umínil vydavatelství v budoucnu přimět, aby ho za ni mnohonásobně odškodnila.

V létě, kdy byl už zoufale zadlužen, dostal od sanfranciského EXAMINERU nabídku, aby pro ně psal články do nedělní přílohy. Právě před čtyřmi roky tam poslal první článek, tehdy si nutně potřeboval vydělat pár dolarů na živobytí pro Floru, malého Johnnyho Millera a pro sebe, dokud nedostane místo u pošty. Psal články o rohovnických zápasech, jeden hystericky rozvzteklý o připlutí lodi S. S. OREGON jimž proti sobě popudil místní literární kruhy, o „Dívčích boxerských soubojích“, o tom, jak se civilizují Indiáni kmene Washoe, a dokonce deset článků o německém střeleckém závodu Schützenfestu. Snažil se, aby jeho články byly mužné a plnokrevné, jak to redakce slibovala čtenářům, ale vyznívají násilně a strojeně — vynášely mu však na živobytí pro rodinu.

V srpnu ho stihla pohroma. McClure po přečtení povídek,

na nichž Jack pracoval kolik měsíců a k nimž patřily například „Tvář měsíce“ a „Prolhaný Nambuk“, všechny odmítl a ztratil v Jacka víru. „Vaše literární práce, jak se zdá, začínají být takového druhu, že se pro náš časopis nehodí. Samozřejmě chápu, že musíte psát, jak vám káže váš umělecký vkus, ale když od vás nemůžeme dostat materiál, který se nám hodí k uveřejnění, nemyslíte, že by bylo líp, kdybychom vám od září nebo od října přestali posílat sjednané zálohy na honoráře?“ Jack musel živit šest krků a měl přijít o jediný spolehlivý zdroj příjmů!

McClure sliboval, že kdyby se Jack vrátil k takovým povídkám, jaké psal dříve, časopis by ho skvěle odměnil. Tak vida — kdyby McClura poslechl a usilovně se snažil kopírovat své dřívější povídky nebo kdyby psal podle zavedeného vzoru, mohl by za to dostat pěkné peníze — a když uposlechne příkazů svého hloubavého mozku a bude pokračovat ve svých revolučních snahách objevit nové oblasti lidského jednání a novou uměleckou formu, je i se svou rodinou znovu odsouzen k nedostatku a hladu. Jacku Londonovi, který prohlašoval, že vášnivě touží po penězích, který řekl, že je ochoten zaprodat se vydavatelstvím tělem duší, když mu za to dobře zaplatí, který se přiznával, že se bude „bez ostychu a důsledně rvát o peníze“, zbývala jen jediná možnost, jak se rozhodnout. Hodil McClura přes palubu a psal dále tak, jak doopravdy cítil a jak věděl, že musí psát.

Měl před sebou ještě dva měsíce, než mu McClure přestane posílat pravidelně každý měsíc sto dvacet pět dolarů. Když se dá zoufale do práce, když bude zuřivě psát, jistě se mu podaří něco prodat a objevit nové literární možnosti!

VI

„Nový rok mi začíná samými starostmi, samým zneklidňováním a zklamáním.“ Dluhy mu už vzrostly na tři tisíce dolarů hlavně proto, že ho lidé měli rádi, že mu důvěřovali a poskytovali téměř neomezený úvěr. Nevydělával dost, aby mu to stačilo pro všechny, které musel podporovat a jichž neustále přibývalo. Byl nespokojen — zdálo se mu, že v literární práci nedělá dost rychle pokroky, že potrvá dlouho, než z něho bude známý spisovatel. Ale hlavně ho skličovaly záchvaty malomyslnosti, které na něho občas doléhaly už v mládí. „Včera jsem měl k večeři divokou kachnu a želvu, šampaňské a všelijaké báječné nápoje, které jsem jakživ předtím nepil, a rozechřívával jsem si srdce i mozek vzpomínkami na surové orgie z mládí.“ (V lepší náladě vzpomínal na ty orgie jako na romantická dobrodružství.) „Byli jsme banda vandráků a zhovadilců a pili jsme laciné kořalky, po kterých se nám zdvíhal žaludek. Potom jsem se oddával snění, až jsem se nakonec z toho bahna povznesl k divokým kachnám, želvám a šampaňskému, ale přesvědčil jsem se, že je ve mně stále stejný kvas, jenže zásluhou umění má teď vyšší úroveň.“

Jsou to slova zklamání a chorobného znechucení, ale jen poměrně, je to jen recidiva malomyslnosti u nezkrutného individualisty, který se veškerou svou energií snaží dobýt světa. V záchvatu sklíčenosti píše: „Co znamená ten kvas všude kolem nás, kterému se říká život? Není divu, že slabí lidé už od věků vyzývají bohy, aby jim na tu otázku dali odpověď. Takový bůžek je pohodlné zařízení, dovede lidičkám vysvětlit všechno. Ale co ty a já, kteří žádného boha nemáme? Vědomí, že člověk je materialista a monista, je zatroleně slabá útěcha.“

Z hlediska literárního neměl vůbec důvody k malomyslnosti: George P. Brett, šéf nakladatelské firmy Macmillan, jednoho z největších amerických vydavatelství, mu 27. prosince napsal, že jeho povídky jsou nejlepší, jaké byly v Americe uveřejněny, a že by je firma Macmillan velmi ráda vydala knižně pro Ameriku i Anglii. Jack ihned poslal Brettovi výbor ze svých aljašsko-indiánských povídek s názvem „Děti mrazu“. Uplynulo pouze pět dní od chvíle,

kdy Jack napsal melancholickou úvahu o kvasu, kterému se říká život, a nakladatelství Macmillan mu sdělilo, že jeho povídky „Děti mrazu“ přijímá a zároveň vyhovuje jeho žádosti a poukazuje mu zálohu dvě stě dolarů. Když Jack Brettovi děkoval, jeho sklíčenost už byla tatam: „Nevím, zda ‚Děti mrazu‘ představují pokrok ve srovnání s mými dřívějšími povídkami, ale vím, že jsem schopen napsat velká díla a že je napíši, jen se musím sám v sobě vyznat.“

V únoru se Jack začal stěhovat do kopců. V Piedmontu našel dům na pětiakrovém pozemku, obklopený velkolepými borovicemi. Pozemek byl z poloviny osázen ovocným sadem a z poloviny byl neobděláný, porostlý zlatými máky. V domě byly velký obývací pokoj a velká jídelna se stěnami obloženými santálovým dřevem, mezi borovicemi stál domek pro Floru a Johnnyho Millera. „Máme nádhernou verandu, širokou, dlouhou a chladnou, z oken je vyhlídka na sanfranciský záliv do dálky třicet až čtyřicet mil a kolem dokola na celé protější pobřeží od Marin County až k hoře Tamalpais, a samozřejmě i na Zlatou bránu a Tichý oceán a to všechno mám za 35 dolarů měsíčně!“

V domě bylo pořád plno lidí, jen málokdy zůstaly postele pro hosty neobsazené. Spisovatelé, kteří přijeli na návštěvu z východu, byli ihned uváděni do Jackova domu, i socialisté na přednáškovém turné, herci, hudebníci a inteligentní přátelé Jackových přátel. Protože každý byl v domě vítaným hostem a měl pocit, že ho tam mají rádi, kruh Jackových známých se rychle rozrůstal — a s ním vzrůstaly výdaje za jejich hostění. Redakce EXAMINERU mu dál svěřovala zvláštní úkoly, jako třeba napsat interview s guvernérem Taftem po jeho návratu z Filipín, ale Jack si naříkal Cloudesleymu Johnsovi: „To bys koukal, jaké stohy braku vyrábím! Jestlipak vůbec někdy vybědnu z dluhů?“ Když mu jeden majitel oaklandského potravinářského obchodu psal, aby laskavě splatil dluh sto třicet dolarů, Jack mu v záchvatu zlosti odpověděl jízlivým dopisem a vyčínil mu, že ho obtěžuje a uráží, že by měl být zdvořilejší a počkat, až na něho přijde řada, pak že dostane zapláceno, ale jestli mu bude dělat nepříjemnosti a přestane mu prodávat na dluh, že ho v seznamu věřitelů za trest přeskočí. Obchodník dal dopis k dispozici novinám jako reklamní prostředek a noviny jej s chutí uveřejnily, protože historka o dlužníkovi, který peskuje svého věřitele, byla neodolatelně zábavná. Otiskly

ji pak noviny po celých Státech a Jackovi to mohlo posloužit jako naučení, že nemá psát ukvapené dopisy ale Jack si to nevzal k srdci.

Syndikát ženských časopisů v San Francisku ho pozval, aby pro ně přednášel, a Jack jim oznámil, že bude přednášet o Kiplingovi, kterého značná část americké veřejnosti dosud považovala za hrubého a vulgárního barbara. Přednášce se udělala velká reklama a jméno Jacka Londona ve spojení s Rudyardem Kiplingem přilákalo četné a vybrané obecnstvo. Jack vystoupil na pódium a oznámil, že bohužel zjistil, že svůj článek o Kiplingovi poslal jednomu anglickému časopisu a má naději, že bude uveřejněn. Omlouval se, že o Kiplingovi nemůže přednášet, když nemá po ruce materiál, a tak jim proslovil přednášku o „trampech“. Přísné a opatrné sanfranciské dámy vyslechly jeho prohlášení s tak ledovým chladem, že by byl zmrazil každého, kdo by vůči obecnstvu nebyl tak odolný jako Jack. Ale na konci přednášky se ženy rozohnily, neboť Jack trampy plně ospravedlňoval a obviňoval společnost, že ty lidi dohání k potulnému životu. Ženy na něho zaútočily tak prudce, že předsedkyně musela bušit kladívkem do stolu a byla nucena schůzi rozpustit, aby se nestrhla rvačka. — Samozřejmě se pak o tom psalo v novinách.

Jack už byl v oblasti zálivu známý jako podivín a výstředník, ale pak se pověsti o jeho výstřednosti rozšířily po celých Státech. Časopis THE READER k němu poslal svého zpravodaje a ten pak v komentáři k interviewu napsal: „Snad jakživ jsem nepoznal tak snadno přístupného, nekonvenčního, nenáročného a upřímného člověka, jako je Jack London. Je srdečný hostitel, takže jsem měl pocit, jako bych byl odedávna s ním spřátelen. Je bezprostřední jako chlapec, ušlechtilý, roztomilý, primitivní, štědrý a originální.“ A v interviewu Jacka cituje: „Pokud mám svůj vlastní styl, dopracoval jsem se k němu dřinou. Zkuste jej napodobit, jestli se vám to povede, nebo mi za něj namlatte klackem.“ Sanfranciský list CHRONICLE, který o Jackovi už otiskl zprávu, když Jack byl teprve měsíc v matčině lůně, uveřejnil celostránkový článek o piedmontské literární skupině s fotografiemi Jacka v jeho domě obklopeném piniemi.

Mimo četné články psané pro peníze psal Jack román pro mládež s názvem „Plavba na lodi DAZZLE“, pro časopis YOUTH'S COMPANION sérii dobrodružných povídek z Aljašky

s titulem „Povídky rybářské hlídky“ a s Annou Strunskou „Listy Kemptona a Wace“, skvělou filosofickou a analytickou polemiku mezi realistickým a romantickým pojmáním literatury, která zároveň byla zajímavou obhajobou jejich vzájemného vztahu. Jack se s Bessí oženil na rozumovém podkladě, jak se rád vyjadřoval, a jako Wace o tom psal Kemptonovi: „Z biologického hlediska je manželství instituce nutná pro zachování lidského rodu. Romantická láska je umělá fikce, kterou člověk bezděčně vnáší zmatek do přirozeného řádu věcí. Nebyt erotické literatury, nebyt románů o velkých láskách a vášnivých milencích, nebyt kytic milostných písní a balad, nebyt stohů všelijakého braku o milostných dobrodružstvích, nebyt všeho toho, člověk by se asi hned tak nezamiloval.“ Básnička Anna Strunská zase tvrdí, že „nádech růžové záře na obloze, dotyk ruky, barva a tvar ovoce, slzy vynucené nepojmenovatelným soužením, to snad má větší význam než všechno, co se zbudovalo a vynalezlo od počátků lidské civilizace. Nelze rozumově opodstatnit květ, půvab a úsměv života — to, co zahřívá slunečním jasnem naše srdce, co nám říká, že je moudré doufat.“

V březnu už měli na papíře padesát tisíc slov a Jack byl přesvědčen, že dopisy vyjdou knižně. Než poslal rukopis do nakladatelství, pozval Annu k nim do Piedmontu. Za dva roky pověděla na dotazy reportérů: „Dostala jsem od pana Londona dopis, jímž mě pozval do svého domu v Piedmontu, abychom spolu zrevidovali rukopis. K pozvání se připojily i jeho žena a matka. První dny mého pobytu u nich se paní Londonová ke mně chovala srdečně a projevovala velký zájem o naši práci, ale po pěti dnech jsem dospěla k přesvědčení, že jí má návštěva začíná být nepřijemná.“ V roce 1937 se Bessie Londonová svěřila, že slečnu Strunskou s Jackem přistihla v pracovně, že mu seděla na koleně a že se spolu přitisknutí hlava k hlavě skláněli nad rukopisem — nebyl to žádný hřích, ale ženu s tak přísným smyslem pro mravopěstnost to jistě pohoršilo.

„Nedala mi nijak výslovně najevo, že jí je má návštěva nemilá, ale pochopila jsem to z různých drobných příhod a rozhodla jsem se, že udělám nejlíp, když odjedu. A odjela jsem, ačkoli oba manželé Londonovi mi to rozmlouvali. Rozloučily jsme se s paní Londonovou jako dvě známé, které jsou si navzájem sympatické. S panem Londonem jsme byli dobří přátelé, nic víc. Pan London by si přece

ve vlastním domě nezačínal milostný poměr s jinou ženou. Choval se ke mně nesmírně ohleduplně, tak jako vždycky. Podle toho, co jsem vypožorovala, byla jsem přesvědčena, že svou manželku slepě miluje.“

Jack potvrzuje, že slečna Strunská, nanejvýš čestná žena, mluvila čistou pravdu — napsal o ní: „Okouzloval mě její intelekt, nevábila mě jako žena. Vábila mě především svým duchem a nadáním. Rád pátrám a bádám v lidských duších a slečna Strunská pro mne byla nevyčerpatelným zdrojem zajímavých poznatků. Říkal jsem jí proteovská duše. V soukromí a ve chvílích citového vzrušení jsem jí říkal — chcete vědět jak? Tak, že to vystihovalo její intelekt i duši.“

McClure dosud vlastnil autorská práva na „Dceru sněhu“. Román se mu nezamlouval a nehodlal jej vydat, ale vynasnažil se co nejvíc, aby jej knižně vydalo některé jiné nakladatelství. Konečně se mu to podařilo: přijalo jej vydavatelství Lippincottovo a ihned poukázalo zálohu sedm set padesát dolarů. McClure si odečetl, co mu Jack byl dosud dlužen, a zbytek sto pětadesát dolarů mu poslal. Jack chtěl rukopis vzít zpátky, ale nemohl — a pak si řekl, že sice dostal na hotovosti málo peněz, ale umožní mu alespoň splatit nejnaléhavější dluhy. Když začal číst korektury, byl zdrcen — čím dál se mu ten román zdál horší a horší, až konečně dospěl k názoru, že špatná věc se nedá nijak napravit.

21. července dostal od tiskové agentury American Press telegraficky nabídku, aby jel do Jižní Afriky jako jejich dopisovatel: měl posílat zprávy z búrské války. Pořád ještě byl dlužen tři tisíce dolarů, Bessie zase čekala děcko a to znamenalo nové výdaje — ale Jacka hlavně lákalo dobrodružství. Ani ne za hodinu už telegraficky odpověděl, že nabídku přijímá, ještě téhož dne si večer připravil zavazadlo a nazítří ráno na oaklandském molu zlíbal na rozloučenou Bessii i svou dcerku — tam, kde před osmi roky, když doháněl Dělnickou armádu generála Kellyho, vlezl jako slepý pasažér do prázdného nákladního vagónu. Ve vlaku do Chicaga navázal známost se ženou — náhodnou známost, ale přesto měla ovlivnit prudký vývoj jeho příštích životních osudů. „Musím se přiznat k jednomu malému dobrodružství, které je dokladem, jak snadno jsem se nechal strhnout smyslným chtíčem. Tehdy, když jsem se vydal do Jižní Afriky, seznámil jsem se ve vlaku s ženou, která cestovala

s děckem a služebnou. Hned v první chvíli jsme si spolu padli do náručí a pak jsme se už od sebe neodtrhli až do Chicaga. Byla to prostě a zčistajasna smyslná vášeň. Ta žena byla roztomilá, ale jinak pro mne neměla zvláštní kouzlo. Duševně mě vůbec neoslnila a nebylo to ani opojení smyslu. Po třech dnech a nocích, které jsme spolu strávili, nezbylo z toho pranic.“

Nic než vzpomínka na rozkoš, protože si vždycky cenil ženy, z kterých mohl mít požitek. Neměl horoskop, aby na něj poukázal a mohl se hájit: „Bohužel to mám v planetě,“ jako profesor Chaney, ačkoli po něm zdědil jeho dravé pudy. „V mém kosmu tělo moc neznamená. Hlavní je duše. Miluji tělo tak, jak je milovali Řekové, ale je to zalíbení svou podstatou spíš umělecké, byť i ne zcela.“ O něco později mu přátelé hrdě říkali „Hřebec“.

Přestože píše: „Tehdy jsem snadno přestoupil meze“, bylo dobrodružství ve vlaku patrně jeho prvním prohřeškem po dvou letech manželství. A když se vrátil z Anglie, to „malé dobrodružství, které je dokladem, jak snadno jsem se nechal strhnout smyslnou vášní“ mělo mít rozhodující psychologické následky.

Opět přijel do New Yorku v nejparnější léto. Tentokrát „nežebрал na hlavních ulicích o drobné“, aby si mohl koupit lahvičku vychlazeného mléka a knižní novinky s poškozenou vazbou a nečetl je vleže na trávníku v parčíku u Radnice, ale šel rovnou do vydavatelství Macmillan, kde si prvně podal ruku s šéfem velké nakladatelské firmy. George P. Brett byl chytrý člověk, liberální a čestný, s opravdovou láskou k literatuře, který se potom stal Jackovým věrným přítelem a strážným andělem na dlouhá příští bouřlivá leta. Až do konce života se obdivoval Jacku Londonovi. Jack musel stihnout loď a měl málo času na vyjednávání, ale dohodl se s Brettem, že až se vrátí z Jižní Afriky, naváží spolu trvalé spojení a firma Macmillan bude knižně vydávat všechno, co Jack napíše. Řekl Brettovi o „Listech Kemptonu a Wace“ a Brett ihned slíbil, že je vydá.

Jack jel přes Anglii, kde měl mít interviewy s britskými generály, aby na nich vyzvěděl, jaký vývoj situace předvídají v Transvaalu, a pak teprve měl odplout lodí do Jižní Afriky; ale v Londýně ho čekal kabelogram, že se jeho zpravodajské poslání odvolává. Cestovné do Jižní Afriky a zpět měl zaplacené, ale malou zálohu na cestu zatím už utratil,

a tak uvízl v Londýně, sedm tisíc mil od domova, bez peněz a bez zaměstnání.

Vždycky se dovedl rychle přizpůsobit situaci, proto se vydal zbádat poměry v londýnském East Endu, neboť ze svého obsáhlého studia sociologie věděl, že jsou tam nejhorší brlohy chudiny v západním světě, kde lidé žijí v hrůzných podmínkách. Ani ho nenapadlo, že je to smělý a nebezpečný záměr, k němuž je zapotřebí šílené odvahy, zvláště když jde o cizince, o Američana, který se teprve před osmačtyřiceti hodinami octl na anglické půdě — že je opovážlivé snažit se pochopit a analyzovat snad nejpalcivější ekonomický problém, za nějž by se Anglie měla stydět. Vyšla tam už první kniha Jackových povídek a měla kupodivu příznivé kritiky v jinak dost konzervativním tisku. V nakladatelství, které knihu vydalo, jednali s ním velmi slušně, mohl si několik týdnů pobýt v zajímavé literární společnosti a užít volna. Ale Jack si ve vetešnictví v Petticoat Lane koupil ošuntělé sako s jediným zbylým knošíkem a obnošené kalhoty, pár těžkých střevíců, zřejmě po nějakém přihazovači uhlí, tenký kožený pásek a hodně ušpiněnou soukennou čepici a vrhl se rovnou do srdce East Endu. Pronajal si pokojík v nejpřelidnější části chudinské čtvrti a pak se šel osobně představit do nakladatelství. Tam se jeho nápadu zděsili a varovali ho, aby od něho upustil, že by ho mohl někdo ve spánku zavraždit. Ale Jack pocházel z lidu a jejich obavám se vysmál.

V East Endu ho považovali za amerického námořníka, kterého v londýnském přístavu vyhodili z lodi. Znovu se stal Jackem námořníkem a vžil se do té úlohy tak snadno, jako by z ní vůbec nebyl vypadl. Nebyl tam cizím elementem, nepřišel pátrat jako někdo, kdo sestoupil z akademických výšin — patřil tam jako námořní tulák, kterého stihla smůla. Lidé v East Endu ho přijali mezi sebe, pojali k němu důvěru a svěřovali se mu. A to, co se od těch lidských trosk dověděl, zvěčnil v knize s názvem „Lidé z propasti“, která je dodnes živá a silná a pravdivá, která patří k světovým klasickým dílům o lidech, jimž se nepřiznávají výsady civilizovaného světa.

„Přišel jsem tam s určitými jednoduchými kritérii, podle nichž jsem posuzoval, co jsem tam viděl. To, co prospívalo životu a tělesnému a duševnímu zdraví, bylo dobré; to, co život ochuzovalo, co ubližovalo, mržalo a znetvořovalo život, bylo špatné.“ Na základě svých „jednoduchých

kritérií“ zjistil, že život v „propasti“, kde „bydlí“ desetina londýnského obyvatelstva, je ustavičné, chronické hladovění, že celé rodiny — otec, matka i děti — pracují každodenně dlouhé hodiny a vydělají si jen tolik, že mají na činži za jednu místnost, kde celá rodina spí pohromadě, kde musí vařit, jíst a vykonávat všechny intimní potřeby. Zjistil, že nerozlučnými druhy lidí z propasti jsou nemoc, zoufalství a smrt, poznal mezi nimi muže a ženy bez domova, kteří se neprovínilí ničím jiným než chatrným zdravím a chudobou, a přece se jimi smývá sem tam, bezcitně a surově jako s hovady, která vzbuzují ošklivost. Brzy zjistil, že někteří z těch lidí jsou nenapravitelní lenoši a budižkničernové, ale stejně jako v Americe „na trati“ se přesvědčil, že obyvatelé East Endu z devadesáti procent bývali svědomitými pracovníky, dokud je staroba, nemoc nebo hospodářská krize nepřipravila o práci. Nyní byli bez zaměstnání, nebo v nejlepším případě se doma dřeli s nějakými rukodílnými výrobky, a londýnská městská rada je nechávala hnít v brlozích, dokud je milosrdná smrt nevymete z ulic.

„Londýnská propast je obrovské smetiště — bezútěšnější podívaná se jistě hned tak nenajde. Život je tam bezbarvý, šedivý a chmurný, samá beznaděj, bezútěšnost a špína. Vana je něco úplně nevidaného a veškerá snaha o čistotu je pustá fraška. Vzduch je jakoby mastný, prosycený podivnými, všudypřítomnými zápachy. Propast vypocuje ohlupující ovzduší malátnosti, které lidi škrtí a dusí. Rok co rok se tam z anglického venkova vlévá proud čerstvé a zdravé mladé krve, která ve třetí generaci už zahnívá. Neustále hyne čtyři sta padesát tisíc zubožených lidských tvorů na dně sociální propasti zvané Londýn.“

V den korunovace Edwarda VII. se Jack šel na Trafalgarské náměstí podívat na velkolepý středověký průvod. Doprovázeli ho povozník, tesař a námořník, už starší muži bez zaměstnání. Viděl, jak se slizkého chodníku sbírají kousky pomerančové kůry, drobtý chleba jako hrášky, jablkové slupky a ohryzky, černé a špinavé, a jak si je dávají do úst, jak je žvýkají a polykají. „Tvrdí se, že je má kritika poměrů v Anglii příliš pesimistická. Ale musím se hájit, že jsem největší optimista ze všech optimistů, co jich je na světě. Posuzuji lidi jako jednotlivce, ať patří k jakémukoli politickému seskupení. Předvídám pro Anglii velkou a úsměvnou budoucnost, ale politická mašinerie, která ji nyní řídí, podle mého názoru z valné části patří na smetiště.“

Pronajal si pokoj u londýnského detektiva, aby se měl kde vykoupat a převléknout, aby měl kde číst a psát svou knihu a nevzbudil tím podezření. Ve třech měsících přečetl stovky brožur, knih a úředních zpráv o londýnské chudině, rozmlouval s nesčetnými ženami a muži, fotografoval, prochodil pěšky míle ulicemi, bydlil ve veřejných chudobincích i v bytech chudáců, stál ve frontách na rozdávány chléb, s novými známými spal v noci na ulicích a v parcích a přitom ještě napsal celou knihu — znamená to triumf energie, cílevědomosti a vášnivého zaujetí pro námět, jež si umínil zpracovat.

V listopadu přijel do New Yorku s rukopisem „Lidí z propasti“ v kufru. Doufal, že mu nakladatelství Macmillan knihu vydá, ale dobře věděl, že na sociologii nemůže vydělat. Kdysi řekl Anně Strunské, že hodlá ze svého psaní vytráskat třeba poslední dolar, Cloudesleymu Johnsovi napsal, že se časopisům zaprodá tělem duší, když za to dostane dobře zapláceno, ale nyní se sám usvědčil z nedůslednosti. Především byl spisovatel, a teprve v druhé řadě socialista, ale ten, jemuž šlo o vydělávání peněz, byl až na třetím místě.

Přítel, který ho uvítal v přístavu, píše: „Měl na sobě zmačkaný plášť s kapsami nacpanými papíry a dopisy. Kalhoty měl v kolenou vytlačené a vytahané. Byl bez vesty a košili rozhodně neměl bez poskvrnky. Kalhoty měl místo šlí připevněné koženým páskem a na hlavě švihácky nasazenou čepici.“ Ale George P. Brett se díval jen po Jackově rukopisné novince. O „Lidech z propasti“ prohlásil, že to je důkladná práce, tu a tam prohodil břitkou kritickou poznámku, ale knihu ihned přijal k vydání. Jack mu řekl: „Chci se už jednou odpoutat od aljažských námětů. Psáním těch povídek jsem si odsloužil učednická leta a teď cítím, že bych se už mohl pokusit zvládnout širší a všeobecně zajímavější tematiku. Mám v hlavě aspoň půl tuctu knih, samou beletrii, které chci napsat. Za poslední dva roky, od té doby, co jsem dopsal svůj první román, jsem se hodně napřemýšlel a dost jsem už prostudoval, a tak jsem přesvědčen, že teď mohu napsat něco, co bude stát za to.“

Brett byl o tom rovněž přesvědčen, neboť vyhověl Jackově žádosti, aby mu nakladatelství vyplácelo na zálohách sto padesát dolarů měsíčně. Za to se Jack měl zavázat, že všechny knihy, které v budoucnu napíše, vydá v nakladatelství Macmillan. Při loučení mu Brett dal snad nejlepší radu,

jaké se mu mohlo dostat: „Doufám, že od nynějška se budou vaše literární práce neustále zdokonalovat, jak tomu podle mého názoru bylo u vašich prvních knih, ale o nejposlednějších se to už nedá říci, protože je na nich znát spěch. V literatuře je místo jen pro to nejlepší, co je člověk schopen dokázat.“ Jack mu odpověděl: „Jakmile se zas postavím na nohy, nehodlám už chrlit jednu knihu za druhou, ale napíši ročně jen jednu, a dobrou. Bez tak se nedá říci, že knihy chrlím. Píši velmi pomalu. Napsal jsem tolik proto, že jsem pracoval bez ustání, vytrvale den za dnem, vůbec jsem si nedopřál odpočinku. Jakmile nebudu odkázán na každodenní výdělek, abychom doma měli druhý den co jíst, až nebudu nucen plýtvat energií na psaní škvárů, až budu mít dost času přemýšlet a vyjádřit literární formou to nejlepší, co ve mně je, pak se mi jistě podaří velké dílo.“

Ve vlaku cestou na západ si v pohodlném pullmanu rozložil na protějším sedadle své tři knihy vydané v říjnu, několik týdnů před jeho návratem do New Yorku: „Dcera sněhu“, „Plavbu v člunu Dazzle“ a „Děti mrazu“. Pochopil, že vydat za měsíc tři knihy je sice rekord, ale i pošetilá opovázlivost, kterou mu právě Brett vytkl. Umínil si, že když se teď „zavedl v jednom nakladatelství“, bude si počínat hospodárněji. Vedle těch knih si rozprostřel před sebou novinové výstřižky, aby si přečetl, jak jeho knihy dopadly u kritiky. Román „Dcera sněhu“, který vyšel v nakladatelství Lippincott, měl některé velmi ostré kritiky; hlavně mu vytýkaly, že Fróna Welsová je postava nepřesvědčivá a že román má nedbalou kompozici; ale jinak se o něm kritikové vyslovovali shovívavě, nadšeně chválili mocně působivý a názorný styl a předpovídali, že příští román se autorovi jistě povede líp. Jackovi se ulevilo, neboť čekal, že ho kritika zřeže. Knihu „Plavba v člunu Dazzle“, která vyšla ve vydavatelství CENTURY COMPANY, přijala kritika dost lhostejně, jak se dalo čekat, protože to byla četba pro mládež. Svou nejvýznamnější knihou aljašsko-indiánských povídek „Děti mrazu“, první knihou vydanou v nakladatelství Macmillan, si Jack dobyl nej přednějšího místa mezi americkými povídkáři.

Opřený v sedadle u okna, za nímž bleskurychle mýjely neviditelné krajiny, rozpomínal se s potěšením, jak si kdysi umínil obrodit americkou povídkovou literaturu, a přitom si v duchu opakoval chválu, jakou štědře vzdávali kritikové jeho povídkám „Děti mrazu“: Londona jako povídkáře

předčí málokdo ... jeho vlastní žánr, v němž se osvědčil a dobyl si úspěchu ... podivuhodný literární talent, který se bude dál rozvíjet ... získá si všeobecnou a trvalou slávu.“ Byl šťasten a hrdý na sebe, ale přitom si uvědomoval, že se dostal jenom na nejnižší příčel žebříku, že boj teprve začíná. Rozehříval se svými plány a nápady a slíbil si, že udělá pro americký román totéž, co už udělal pro americkou povídku. Po Hermanu Melvillovi nikdo nedal americké literatuře velké námořní romány — a tak si umínil, že je napíše sám. Americká literatura doposud neměla velké proletářské romány — bude tedy psát velké proletářské romány, vynasnaží se, aby se líbily čtenářům i kritice, a zároveň se přičiní o uspěšení socialistické revoluce. Měl už svou práci rozvrženu do budoucna — potrvá mu to dvacet let, než napíše všechno, co si usmyslil. A umínil si, že musí splnit každý požadavek svého programu, než mu vyprší lhůta pobytu na zemi.

Když přijel do Piedmontu, dověděl se, že Eliza už je šest týdnů u Bessie a musí udržovat mír mezi Bessí a Florou. Shledání s rodinou bylo radostné — v dopise Brettovi datovaném 21. listopadu 1902, v němž mu Jack v stručném přehledu vyřčil svůj život, napsal: „Pochopil jsem, že v manželství mohu zakotvit; zatoužil jsem po spořádané domácnosti, a tak jsem se oženil a přibyla mi tím zátěž. Ale doposud jsem toho nikdy nelitoval. Vyvážily mi to velké výhody.“

Víc než kdy jindy na něho dolehly povinnosti plodného spisovatele — musel nejen pracovat na nové knize, ale také na korekturách „Listů Kamptona a Wace“ a ještě si opravoval a vylepšoval rukopis „Lidí z Propasti“. Těšil se, že si může nyní přečíst spoustu knih, povídek a článků, a rád se zas vrátil k dřívějšímu dennímu rozvrhu: zase devatenáct hodin pracoval a spal jen pět hodin. Dopřával si oddechu jedině ve středu večer, kdy se u něho scházeli starí přátelé i noví, kdy hrál poker, bavil se s nimi různými žertovnými hříčkami a učil je luštit rozličné hlavolamy, které si z Anglie přivezl ve svém jediném kufru.

Bessie znovu slehla a znovu obdařila Jacka holčičkou. Tentokrát se nepořežal na ruce, ale zato se mu přetála naděje, která se táhla celým jeho životem, že bude mít syna, kterému odkáže nejen své jméno, ale i dědičné literární nadání. Byl celý nešťastný a ze zklamání se div nerozstonal — Bessie se z něho skutečně rozstýkala.

Chodil kolik dní bezútešný a jako bez ducha, a pak ho z chorobné strnulosti zburcoval nový nápad. Byl to námět k povídce o psu, která by byla protějškem jiné povídky se stejným námětem, napsané před rokem. Za čtyři dny napsal povinné čtyři tisíce slov a k svému překvapení zjistil, že to je vlastně jen počátek, že mu v té povídce narůstají nové motivy a širší záběry, o nichž se mu ani nesnilo. Rozhodl se, že ji nazve „Volání divočiny“ a nechá ji, ať se rozroste, jak to bude potřebovat — úplně ho opanovala, a tak mu nezbyvalo, než ji poslušně napsat — ovládla a rozohnila jeho obraznost jako žádná jiná z jeho dřívějších. Třicet nádherných lopotných dní psal tlustě ořezanou tužkou na hrubý poznámkový papír, jen tu a tam opravil pár slov a hotovou povídku opsal na stroji. Všechno ostatní zanedbával — přátele, rodinu, věřitele, novorozené dítětko, korektury, jichž každodenně přicházely z nakladatelství Macmillan balsky — chtěl být sám se psem Buckem, půl bernardýnem a půl skotským ovčákem, který si předtím žil jako venkovský milostpán na ranči ve slunném údolí Santa Clara, než ho ukradli a prodali do pustiny v Klondiku.

Až jednou na středečním večírku Jack svým přátelům to delší zanedbávání vynahradil. Uvelebil se ve velké lenošce u krbu a přátelé se rozsadili na sedátkách pod okny a na polštářích na zemi. S vážným výrazem v šedomodrých očích, rukou si zálibně pročesáváje vlasy, předčítal jim vyprávění o skvělém psu Buckovi, který zůstal věrný milovanému člověku, až ho jednou volání z lesa a vzpomínky na divoké vlky přilákaly zpátky k primitivnímu životu. Toho večera se nehrály karty, nebyla žádná legrace a nerozléhal se divý smích. Jack četl až do jedné po půlnoci v čím dál tím hlubším tichu. Když dočetl, jeho přátelé, obvykle tak hovorní, neřekli skoro nic, ale Jack jim viděl na rozzářených očích, co si myslí. Konečně se ospravedlnil, proč tři roky nepsal téměř nic jiného než aljašské povídky: a tahle byla i po stránce formální tak dokonalá, že po několik hodin jí jeho přátelé naslouchali uchvácení stejným nadšením, s jakým ji on tvořil.

Nazítří ráno dal rukopis do obálky spolu s oznámkovanou obálkou, v níž mu měl přijít zpátky, nalepil na ni známku a poslal jej do redakce SATURDAY EVENING POST, nejrozsířenějšího časopisu na světě, který platil nejvyšší honoráře. V redakci nikoho neznal, dosud se vůči jeho povídkám nechovali pohostinně a nedělal si velké naděje, že mu tuto

uveřejní. Ale ta „důmyslná mašina, která přendává rukopis z jedné obálky do druhé“ a kterou před čtyřmi roky jako nováček tak prudce napadal, tentokrát zřejmě nefungovala. V redakci SATURDAY EVENING POST nepoužili oznámkované obálky, kterou jim poslal. Zato od nich dostal tenkou podlouhlou obálku se srdečným dopisem, že jeho příspěvek redakce přijala, a s šekem na dva tisíce dolarů.

Dva tisíce dolarů za dvouměsíční práci! Jack vždycky tvrdil, že se vyplácí psát vážnou literaturu. Vždycky tvrdil, že bude psát, jak musí, a že redakce přiměje, aby se jim to líbilo. Dva tisíce dolarů... z toho už může zaplatit účty lékaři, který byl u porodu jeho druhé dcerušky a pak léčil Bessii, nahromaděné účty za léčení Flory a matky Johnnyho Millera, kolik set dolarů, které je dlužen pojišťovnám, obchodním domům, kupcům, řezníkům, drogeriím, za šatstvo, psací stroj a papírnické zboží, a ještě může poskytnout pomoc přátelům, kteří to potřebují ... konečně si může koupit vytoužené zasklené knihovny a objednat v knihkupectví na východě čtyřicet knih, jejichž seznam si připravil. Od té doby, co prodal „Odysseu Severu“, nepocítil takovou radost. Což nesplnil všechno, co si slíbil? Což do šedesáti dnů od svého hrdinného předsevzetí ve vlaku cestou z New Yorku nezačal obrozovat americký román? Když přátelé, kterým předčítal „Volání divočiny“, se k němu opět ve středu večer nahrnuli, blahopřáli mu, tiskli mu ruku a poplácávali ho po rameni, poslal pro pár lahví trpkého italského vína a pak se v mírném opojení oddával růžovým snům o budoucnosti.

Sotva si takhle polepšil, najal ještě jednu služebnou, protože se Bessie po porodu velmi pomalu zotavovala, a zval si ještě víc známých. Chodilo k němu i hodně půvabných žen a Jack, nyní úspěšný spisovatel, nezůstával vůči nim nepřístupný. Snad se v manželství nemohl dost vyžít, vždyť Bessie za dvaatřicet měsíců jejich manželství byla dvakrát po devět měsíců těhotná a pak se nejméně půl roku zotavovala po porodu. A Jack byl na ženy zvyklý už z dob, kdy žil s Mamíí na RAZZLE DAZZLE, a nemohl zapomenout na tři dny a noci, které prožil ve vlaku s docela cizí ženou z Chicaga. Před třemi roky napsal: „Mám velké srdce a jistě povedu čistší a zdravější život, když se sám podrobím kázni a nebudu se už svobodně toulat, kdy a kam se mi zachce,“ ale najednou se přestal krotit a přestal plnit závazky, jež si sám uložil.

Když Jack navrhoval nakladatelství Macmillan knihy, které hodlá napsat, nezmnínil se o „Volání divočiny“, protože tehdy ještě nevěděl, že je napíše. Poslal rukopis i Brettovi, který mu 5. května odpověděl, že se mu nezamlouvá titul. „Jinak se mi kniha velice líbí, ačkoli se obávám, že je příliš věrná přírodě a příliš robustní, aby si mohla získat oblibu u sentimentálních čtenářů, kteří si libují v dílech Setona-Thompsona.“ Nabídl Jackovi honorář dva tisíce dolarů jednou provždy za to, že mu knihu vydá ihned, místo smlouvy na procenta z ceny výtisků, kdyby její vydání odložil o rok nebo dva roky. „Mám chuť udělat s ní experiment — vydali bychom ji v pěkné typografické úpravě, vynaložili bychom velké peníze na reklamu, aby se hodně četla, čímž by se usnadnil prodej nejen vašich knih, které už vyšly, ale i těch, které teprve vydáme. Ale nenechte se v téhle věci příliš ovlivnit. Rozhodněte se zcela samostatně, a nebudete-li souhlasit se zaplacením autorských práv jednou provždy, vydáme vaši knihu později, až nám to bude možné, a za takových podmínek, na jakých se s námi dohodnete.“

Dva tisíce ze SATURDAY EVENING POST Jack už utratil a sto padesát dolarů měsíčně z nakladatelství Macmillan mu nestačilo na živobytí pro šestičlennou rodinu, dvě služebné a tetu Jenny. Žádná kniha mu doposud nevynesla ani tisíc dolarů, natož dva tisíce — proč by tahle měla být výjimkou? I kdyby mu „Volání divočiny“ v knižním vydání vyneslo celkem víc než dva tisíce dolarů, musel by nejméně dva roky čekat na honorář, a zatím by jej možná vyčerpал měsíčními zálohami po sto padesáti dolarech. Takhle ihned dostane na ruku dva tisíce a bude mít na útratu — zvláště na tu pěknou plachetničku SPRAY, kterou si už vyhlédl. Proto Brettovu nabídku přijal a prodal nakladatelství Macmillan provždy autorské právo na „Volání divočiny“.

SPRAY byla plachetní šalupa s pěknou kajutou, kde mohly spát dvě osoby a kde se dalo i vařit. Jack ji koupil, protože zatoužil zas jednou žít na vodě a také se hodlal pustit do námořního románu — než se dá do psaní, chtěl pod nohama zas cítit loď. Bylo tomu devět let, co odešel ze SOPHIE SUTHERLANDOVÉ, a pomalu už vyšel z praxe. „Román bude vyprávěním o mých zážitcích na jedné sedmiměsíční plavbě. Čím častěji o nich přemýšlím, tím se mi zdají pozoruhodnější.“ Brett mu odpověděl: „Skládám do vašeho námořního románu velké naděje. Vychází jen málo románů ze života

na moři a beztak nejsou k ničemu, proto by opravdu dobrý námořní román nepochybně dnes měl veliký úspěch.“

Jack se stále nemohl zbýt ozvěny Brettových povzbuzujících slov, a tak zásobil plachetničku SPRAY potravinami a houněmi a vydal se na týdenní plavbu po zálivu ve stopách svých nájezdů do mělčin a úžin, kam se kdysi pouštěl jako smělý pirátský lovec ústřic a pak jako člen rybářské hlídky. Po týdnu se vrátil domů, s pachem mořské soli v chřípích a s rukama zmozolnatělýma od plachtových lanek, posadil se k psacímu stolu a pustil se do první kapitoly „Mořského vlka“. Když doma neměl klid a přátelé mu nedali pokoj, donesl si jídlo na SPRAY a vyplul na moře sám a sám, celé dopoledne psal venku na palubě, každodenně tisíc pět set slov, nechal se opalovat jarním sluncem a přitom se mu rozpaloval mozek nápady pro román. Po obědě plachtil, střílel kachny na řece Sacramento a lovil ryby k večeři. V sobotu dopoledne obyčejně bral s sebou Bessii, obě své dcerky, Elizu a jejího synka, nebo celý hlouček svých přátel, a strávil s nimi na moři celou neděli.

Bylo to období pilné a radostné práce. Socialistický časopis WILSHIRE'S uveřejňoval na pokračování „Lidi z propasti“, a tím se Jack dostal mezi přední socialistické spisovatele, v časopise COMRADE mu vyšel článek „Jak se ze mne stal socialista“ a v INTERNATIONAL SOCIALISTIC REVIEW mu otiskovali celou sérii kritických článků. Z WILSHIRE'S dostal za „Lidi z propasti“ skrovný honorář, ale pro socialistické noviny a časopisy vždycky psal zdarma. Napsal si také dvě nové přednášky pro místní socialistické organizace kolem zálivu, „Třídní boj“ a „Stávkokaz“, které pak byly obě uveřejněny v socialistickém tisku. Soudruzi ze socialistických organizací mu začali psát ze všech končin Států a téměř vždy ho ve svých dopisech oslovovali „Milý soudruhu“ a končili „Vám a revoluci oddaný“. Jack na všechny dopisy odpovídal, adresáta vždy oslovoval „Milý soudruhu“ a dopis rovněž končil slovy „Vám a revoluci oddaný“.

Když se Jack takhle stával známým a slavným, proměnil se jeho piedmontský dům ve středisko intelektuálních kruhů z oblasti zálivu. Za týden přišlo do jeho domu nejméně sto lidí a všechny Jack pohostil. Přestože v domě byly dvě služebné a teta Jenny pečovala o děti, byla spousta práce v domácnosti. Bessie neměla vždycky náladu na velkou společnost, měla čím dál tím víc práce a jednou prý na

středeční večer schválně přichystala méně jídla, než ho bylo zapotřebí k nakrmení všech lidí, kteří měli přijít. Také se jí moc nezamlouvalo, že za Jackem chodí tolik žen a že se mu málem vnucují — jejímu Jackovi, který se dovede tak teple a rozzářeně usmívat a tak bouřlivě smát. Začínala žárlit. Jack chtěl, aby si Bessie kupovala pěkné šaty ke společenským příležitostem, protože ho lidé hodně zvali, ale Bessie o ně nestála. Eliza tedy chodila nakupovat s ní a hleděla Bessii přesvědčit, jak ohromně jí sluší dlouhá sametová toaleta a sametový klobouk s pérem, ale Bessie umíněně chodila jen v blůze, námořnické sukni a námořnickém klobouku třeba i na večere do okázalého sanfranciského Klubu bohémů, kde byl Jack čestným členem. Jacka to mrzelo, protože se obdivoval Bessiině krásné postavě a přál si, aby se Bessie oblékala co nejslušivěji. Bessii nebylo dobře, a proto se jí vůbec nechtělo chodit z domu — snad se to dá zčásti takhle vysvětlit, ale možná i tak, že se Fredu Jacobsovi asi líbila v námořnické blůze a sukni.

Ale jinak spolu Jack a Bessie dobře vycházeli, ačkoli mívali občas drobné třenice. Jack jí jediné vytykal, že by měla víc číst, aby spolu mohli hovořit o knižních novinkách. Bessie odpovídala, že by ráda hodně četla, ale že ji dětátko probudí ráno v šest a od té chvíle je až do deseti večer ustavičně spousta práce v domácnosti. Jack jí soucitně hladil ruku a říkal ano, já vím, až budou děti trochu větší, bude zas víc času na čtení. Ačkoli dnes, po pětatřiceti letech, lidé tvrdí, že Jack a Bessie byli navenek nesourodá dvojice — Bessie vypadala dost staře a usedle, kdežto Jack byl pořád jako bujný chlapec — všichni se shodují v tom, že spolu žili v souladu. Hlavně to tvrdí Eliza Londonová-Shepardová, která se tehdy s nimi hodně stýkala a často pobývala u nich v domě. Jackova jediná kritická výtku, jíž v duchu Bessii káral — jak je zřejmé z jeho zápisků z toho období — byla, že je Bessie příliš úzkoprsá, že „nosí kolem čela utaženou pásku“. Ale poctivě se také přiznával, že to o ní vždycky věděl a že ho především přitahovala svou citovou rovnováhou, která mu byla velice potřebná. Cloudesley Johns řekl Jackovi po jeho svatbě: „Já ti negratuluji, počkám s tím až k desátému výročí,“ a Jack mu v březnu roku 1903 napsal: „Mimochodem, tak si myslím, že by ses měl snad už přihlásit s blahopřáním k mé svatbě, které tak dlouho odkládáš. Jsem ženatý skoro tři roky, mám dvě děti a skvělý život. Tak si s tím pospěš! Nebo se



Jack London v r. 1909, kdy vyšel
Martin Eden

Jack London v r. 1902, kdy psal knihu
Lidé z propasti

Jack London jako farmář

Jack London v r. 1916



Charmian Kittredgeová ho často chodila ošetřovat. Začátkem července, jakmile mohl Jack zas chodit, odjel k rodině do Glen Ellen a Charmian Kittredgeová rovněž odjela do Glen Ellen k tetě.

OVERLAND MONTHLY přestal vycházet a Roscoe Eames a Edward Payne přišli o zaměstnání. Edward Payne a Ninetta Eamesová společně v Glen Ellen postavili větší nízký domek a nazvali jej Wake Robin. Zběhlý kazatel Payne byl bez kazatelny, a tak na protějším břehu nastavěl venku hrubé stoly a lavice z polen a prken, aby měl kde pořádat náboženské schůze a filosofické debaty. Ninetta Eamesová chtěla vydělat, proto tam postavila chaty a stany a pronajímala je rodinám.

Jack přijel do Glen Ellen za rodinou, která měla příjemné ubytování v chatě se střechou z plachtoviny uprostřed manzanitového a madronového háje. Obyvatelé osady žili kolektivně, všichni vařili ve společné kuchyni a jedli u dlouhých hrubých stolů na břehu potoka. Jack dal za pár dolarů postavit hrázku v korytě čistého studeného potoka s písčnými břehy, a tak vzniklo koupaliště pro celou letní osadu, lidé si tam mohli zaplavat a slunit se na písku. Jack si tam odpoledne hrával s dětmi a učil je plavat. Ráno sedával na skáceném dubovém kmenu ve stínu na odlehlém místě na břehu potoka a za dopoledne napsal povinných tisíc slov denně. A jednou večer koncem července se kolem něho shromáždili všichni obyvatelé osady, i malé děti, zachumlaní v dekách, a Jack jim předčítal první polovinu „Mořského vlka“. Četl ji z papírů položených mezi dvěma rozsvíceným svíčkami na dubovém kmenu, na němž dopoledne psával, a lidé z osady i ze sousedství mu na zemi leželi u nohou. Když obrátil poslední list, začínala obloha nad horou Sonoma růžověť ranními červánky. Ještě dnes žijí lidé, kteří koncem července v roce 1903 na břehu potoka v Glen Ellen slyšeli Jacka předčítat „Mořského vlka“ a doposud na to vzpomínají jako na jeden ze svých nejkrásnějších a nejdojímavějších zážitků.

Ale neuplynulo ani půl dne a nastal výbuch, který Londonovům rozbil rodinný život. Snad by bylo nejlíp nechat o tom vyprávět vlastními slovy Bessii:

„Jednou koncem července jsme po obědě zůstali s Jackem u koupaliště a povídali jsme si. Jack chtěl na čas odjet z Oaklandu, protože ho tam lidé příliš vyrušovali při práci. Řekl, že má v úmyslu koupit ranč v jihokaliifornské pustině,

a ptal se mne, zda bych se tam chtěla natrvalo odstěhovat. Odpověděla jsem, že bych určitě chtěla, pokud tam bude pro děti všechno, čeho je v dnešní době zapotřebí. (Bessie byla především matkou a pak teprve manželkou.) Jack slíbil, že tam všechno budou mít, a začali jsme si dělat plány, jak se už na podzim odstěhujeme.

Asi ve dvě hodiny jsem se s oběma dětmi vrátila do chaty, abych je uložila k spaní. Slečna Kittredgeová tam čekala a viděla jsem ji, jak jde s Jackem k velké houpací síti u domku paní Eamesové a o něčem rozmlouvají. Dala jsem děti spát a pustila jsem se do úklidu kolem naší chaty. Slečna Kittredgeová s Jackem seděli v houpací síti celé čtyři hodiny a pořád o něčem hovořili.

V šest hodin přišel Jack za mnou do chaty a řekl mi: „Bessie, já od tebe odcházím.“ Nepochopila jsem, jak to myslí, a překvapeně jsem se zeptala: „Vracíš se do Piedmontu?“ — „Ne,“ odpověděl Jack, „odcházím nadobro ... nebudu už s tebou žít...“ Úplně omráčená jsem si sedla na kraj lůžka a dlouho jsem se na něho jen udiveně dívala, než jsem ze sebe vypravila: „Ale tatínku, ... co tě to napadlo... ještě před chvílí jsi mluvil o tom ranči v jižní Kalifornii...“ Jack zatvrzele opakoval, že se chce se mnou rozejít, a já jsem se s pláčem pořád ptala: „Ale já tě nechápu.... co se vlastně stalo?“ Neodpověděl mi už ani jedním slovem.“

Nikdo, a především Bessie, netušil, že příčinou Jackova náhlého rozhodnutí je Charmian Kittredgeová. Bessie mohla žárlit na různé ženy, ale ani ve snu ji nenapadlo žárlit na Charmian Kittredgeovou, která byla o pět až šest let starší než Jack, nikomu se obzvlášť nelíbila a v piedmontském kruhu intelektuálů, kde ji dobře znali, byla terčem jízlivých poznámek a vtipů. Pořád se kolem Jacka točila, ale na to byla Bessie už zvyklá z jejich piedmontského domova. Zdálo se, že Jack se s ní tam v letním táboře nestýká víc než s jinými lidmi. A mimo to o ní své ženě kolikrát řekl leccos, co jí zrovna nesloužilo ke cti, a Bessie věděla, že o ni Jack nijak zvlášť nestojí.

V červnu roku 1903, měsíc předtím, než se Jack s Bessí rozešel, slečna Kittredgeová mu napsala: „Ty jsi báječný, nejbáječnější člověk na světě. Viděla jsem, jak jsi v obličejí omládl, sotva jsem se tě jen dotkla. Co se to děje, a kam vlastně na světě patříš? Asi nikam — jen tam, kde je tvé srdce.“ A Jack jí píše, také v červnu: „V duchu tě objímám.

Líbám tě na ústa, na tvá odvážná, upřímná ústa, která znám a miluji. Kdyby ses byla upejpala a zdráhala, kdybys byla zalhávala, co se s tebou děje, kdybys byla sebestmíň předstírala stydlivost a falešnou štítivost, byla by ses mi nadobro a úplně zošklivila. „Můj drahý, má lásko!“ Nemohu v noci usnout a znovu a znovu si ta slova připomínám.“

7. července Charmian Kittredgeová píše Jackovi: „Čím dál tím víc se něčeho bojím. Mám strach, že my dva si nikdy nebudeme moci navzájem plně dát najevo, co jeden pro druhého znamenáme. Je to všechno tak úžasné a nic, čeho je člověk schopen, nemůže to přiměřeně vyjádřit.“ Za několik dní mu napíše na stroji z kanceláře v San Francisku: „Jsi básník a jsi krásný. Věř mi, můj drahý, můj milovaný, že jsem jakživa neměla z ničeho takovou radost, takovou upřímnou radost! Cítit, že mohu plně uspokojit muže, který je pro mne ten nejbáječnější na světě!“

V Glen Ellen, v chatě se střechou z plachtoviny, kde pokojně spaly jeho dvě děti, probděl Jack snad nejbědnější noc v životě, zmítán protichůdnými city. Byl především hodný, laskavý člověk. Byl sám citlivý, poznal, co je to trpět, a nechtěl nikomu ubližovat. Vždycky rád lidem pomáhal a dělil se s nimi o všechno, co měl. Ale posedla ho tak otřesná, neodolatelná vášeň, že chtěl nechat na holičkách svou ženu a děti, tak jako nechal na holičkách Floru a Johna Londona, když byl mladší a citově neustálený. Byl člověk útlocitný, jako socialista měl soucit s veškerým lidstvem, bez naděje na odměnu chtěl dát všechno, aby mohl zlepšit úděl mas, ale nad jeho sociálním a mravním svědomím zvítězil nietzscheovský ideál, ten podivný přelud, který v něm ustavičně sdílel lože s jeho socialismem a pobláznil ho představou, že on je ten nadčlověk a může si urvat ze života, co chce, že se nemusí ohlížet na otrockou morálku a na smýšlení otrockých mas, k nimž patří i Bessie.

Ráno se Jack vrátil do Piedmontu a odstěhoval si všechno, co mu patřilo, z domu, o němž tak hrdě psával svým přátelům, do pokoje, který si pronajal u Franka Athertona. V několika dnech noviny a časopisy přinesly na titulních stránkách zprávu o jeho rozchodu s manželkou. Protože Jack odmítl odpovídat na otázky reportérů, kladli jeho rozchod se ženou za vinu „Listům Kemptonu a Wace“, v nichž Jack napsal: „Milostné uchvácení nemá nic společného s rozumem.“ Tvrdilo se, že tento názor Bessii hluboce uráží a je příčinou, proč se manželství rozbilo.

VII

Vztah mezi Jackem a Charmianou Kittredgeovou začal vyznáváním lásky na vysoké úrovni, která stoupala čím dál výš. 1. září Charmian píše Jackovi: „Jsi můj, jsi opravdu můj, zbožňuji Tě tak slepě a šleně a vášnivě a bez rozumu, jak ještě žádná žena snad nikoho nemilovala.“ Hned nazítří píše zas: „Má lásko, můj báječný, můj milovaný! Miluji na Tobě všecičko, jak jsem jakživa nikoho nemilovala a nebudu už nikoho milovat.“ A za dva dny: „Ach, má nejdražší lásko, jsi můj nejskutečnější a nejopravdovější manžel, a já Tě zbožňuji!“ V příštím dopise stojí: „Mysli na mne s něhou a s láskou, s bláznivou touhou, myslí na mne jako na svou nejdražší přítelkyni, na svou milou, na svou ženu! Znamenáš pro mne celý svět a já budu žít jen vzpomínkou na Tvou tvář, na Tvůj hlas, na Tvá ústa, na objetí Tvých silných a něžných paží — na Tebe celého, můj krásný muži — až do našeho příštího setkání. Ach Jacku, Jacku, jsi úchvatný!“

Jack se nechce v milostných vyznáních a v jejich literárních projevech nechat předstihnout, a tak odpovídá: „Nemůžeš vědět, co všechno pro mne znamenáš. Jak sama říkáš, nedá se to vůbec vyjádřit. Chvilé, kdy se s Tebou setkám, kdy Tě spatřím a kdy se Tě prvně dotknu, jsou chvíle nevýslovně otřesné. Když dostanu Tvůj dopis, pokaždé Tě vnímám úplně tělesně a je mi, jako bych Ti hleděl do zlatých očí. Ach, má drahá, má milovaná, teprve s Tebou jsem poznal, co to je milovat ženu, a po Tobě už nikdy nebudu žádnou milovat.“

Ze strachu, aby se o nich nezačaly šířit pomluvy, kdyby se rozhlásilo, proč se Jack rozešel se svou ženou, setkávali se milenci potají jednou dvakrát týdně. Ve dnech, kdy nemohli být spolu, ulevovali si oba záplavou dopisů. Slečna Kittredgeová v sanfranciské kanceláři, kde byla zaměstnána, denně psala dopisy o tisíci až pěti tisících slov — kdyby se daly dohromady stovky stránek, jež v příštích dvou letech pro Jacka sepsala a naklepala na stroji, bylo by z nich kolik románů v normálním rozsahu. Jsou to dopisy afektované a koketní, potrhle a květnaté, ale pod slovní záplavou se dá rozeznat, že je psala světem proťrelá a chytrá žena.

Ve svých dopisech se oba jeví jako nejvášnivější milenci na světě. Charmian Jackovi píše, jak vždycky věděla, že ji čeká kromobyčejný osud: „Ach Jacku, můj milovaný, má nejdražší láske, má modlo, Ty ani nemůžeš vědět, jak Tě miluji,“ až Jack uvěří, že ho Charmian miluje tak, jak žádný muž od počátku lidských věků ještě nikdy nebyl milován, a zcela přesvědčeně jí odpovídá: „Když mě tak úžasne miluješ, pochybuji, že Tě někdy budu schopen dost milovat.“ V dopise za dopisem jí přihrává téměř automaticky — vždyť on je z těch dvou zamilovaných literát, může tedy psát méně parádní a vášnivá vyznání?

„Ne, ne, má nejdražší, pro mne naše láska není něco nepatrného a bezmocného,“ píše Jack. „Naše láska jistě pro mne znamená víc než život a smrt, jsem-li ochoten pro Tebe žít a zemřít. Že jsi pro mne jediná žena ze všech žen, že po Tobě prahnu tak, jak jsem ještě nikdy žíznivý neprahnul po doušku vody, že mě touha po Tobě trýzní tak, jak jsem se jakživ nemučil touhou po slávě a bohatství — to všechno, všechno je přece důkazem, jak je ta naše láska velká a mocná.“

Omámen každodenním přívalem tisíců slov, jimiž ho oslňovala slečna Kittredgeová, Jack už málem píše jako Marie Corelliová desátého řádu. Zmagnetizován Charmiáním stylem píše jí v téměř květnatém a vzletném staromódním slohu, proti němuž se otevřeně vzpouzel už ve svých prvních literárních pokusech, jenže sám potom psal o lásce stejně nabubřelým stylem, jako by se z něho nemohl vymanit, a pokazil jím hodně svých knih. V „Listech Kemptonu a Wace“ brojil proti sentimentálnímu básnění o lásce, zastával názor, že láska je pouze biologická nutnost — a najednou je z něho „obět bohorovné vášně, která může pouhým polibkem usmrtit“. Škoda, že mu slečna Strunská nemohla nakouknout přes rameno, když psal tyhle dopisy — byla by se podivila, že se octl na úplně opačném pólu, a snad by si se škodolibým úsměvem připomněla jeho výrok: „Nebýt erotické literatury, člověk by se asi hned tak nezamiloval.“

V dopise ze Stocktonu, datovaném 10. listopadu 1903, Jackova nevkusná mnohomluvnost vrcholí: „Věz, má líbezná láske, že jsem vůbec netušil, jak úžasne mě miluješ, dokud ses mi tak radostně a úplně nevzdala — tehdy jsem vycítil, jak mě miluješ, jak se mi vzdáváš každíčným svým nervem. Když jsi svým drahým tělem zpečetila všechno,

z čeho se mi vyznávala Tvá duše, tehdy jsem věděl — věděl! — věděl, že jsi celá moje, celičká moje! Kdybys mě takhle milovala, ale přitom se zdráhala vzdát se mi, neviděl bych v Tobě tak úžasnou ženu. Nemohl bych Tě milovat a zbožňovat tak vrcholně, až do krajnosti, jak Tě teď miluji. Kdyby sis znovu přečtla mé dopisy, jistě by ses přesvědčila, že jsem po Tobě nikdy takhle nešlel, dokud ses mi tak štědře nedala. Teprve pak jsem se stal Tvým otrokem, teprve pak jsem se Ti vyznal, že jsem ochoten pro Tebe zemřít, teprve pak jsem začal k Tobě mluvit ve všech ostatních čarovných hyperbolách lásky. Ale tohle není hyperbola, má drahá, aspoň ne hloupá, sentimentální hyperbola. Říkám Ti, že jsem Tvůj otrok, a říkám to jako člověk *rozumný* — a to je přece důkaz, jak po Tobě doopravdy a doslova šílím.“

V roce 1890 bylo Charmianě Kittredgeové devatenáct a podle svých vlastních slov byla „růžolící děvče, o němž mnoho lidí prohlašovalo, že je hezké, a pokud se netrýznila žárlivostí, byla neustále v dobré náladě“. V roce 1903 jí bylo dvaatřicet a lidé už o ní neřekli, že je hezká: měla tenké rty, úzké oči, unyle přivřeně, a dráždivě vyzývavé vystupování. V mnohém se podobala Froně Welsové, kterou Jack vytvořil záměrně jako vzor ženy dvacátého století. Umrtím rodičů byla donucena vydělávat si na živobytí v dobách, kdy se pro dívku jemných mravů neslušelo, aby se sama živila, a vypracovala se na velmi schopnou sekretářku „s malým a nedostatečným platem třicet dolarů měsíčně“. Byla hodně sečtělá a měla nekonvenční názory. Když se s ní Jack v roce 1900 seznámil, měla už ve své knihovničce několik smělejších soudobých románů, které oaklandská městská knihovna zavrhovala. Charmian upřímně milovala hudbu, pěkně zpívala, a přestože pracovala šest dní v týdnu, měla ještě tolik silné vůle a kázně, že se vycvičila na znamenitou pianistku.

Měla smyslně dráždivý, silný hlas širokého rozpětí, ráda se hodně smála, i když jí pointa vtipu nebyla zcela jasná, a neúnavně mluvila — vydržela prý mluvit bez přerušení čtyři až sedm hodin. Dovedla inteligentně a logicky diskutovat, protože měla pestrou zásobu slov a rčení. Fyzicky byla velice odvážná — například jezdila jako první žena obkročmo na koni do kopců v době, kdy si to troufalo jen málo žen, a pokud si to vůbec troufaly, jezdily v anglickém dámském sedle a jen v sanfranciském parku po cestách

vyhrazených pro jezdce. Měla opravdovou lásku ke koním. Byla intelektuálně i společensky citižádostivá, pilně se vzdělávala, naspořila si peníze na cestu po Evropě, malovala trochu na porcelánové talíře a snažila se, aby se ve všem rok co rok dál zdokonalovala.

Ale jinak, svou jalovou mnohomluvností a zálibou pro načechrané krajkové čepečky, svou roztěkaností, vším, co souviselo s láskou a sexem, dokonale představovala výkvět ženství podle vkusu, jaký panoval v devatenáctém století, a byla tedy úplným protikladem Frony Welsové. Ve vlastním deníku prozrazuje různé stránky své dost složité povahy: například sentimentální zálibu v limonádové romantice — o každém muži, s kterým se třeba jenom náhodně setká, ihned sní jako o úžasně romantickém milenci. Každý muž na ni hledí buď s obdivem nebo s vášnivou touhou a nemůže od ní odtrhnout oči. O ženy vůbec nestojí: každá na ni žárlí, nebo zas ona žárlí na každou ženu. Ve společnosti, kde byli muži, s vervou a s gustem hrála vždycky hlavní úlohu a vědomě na sebe soustřeďovala jejich pozornost. Lidé, kteří ji znali, tvrdí, že pokud šlo o muže, neuznávala soukromé vlastnictví. Protože měla zřejmě poličeno na manžela, mladé ženy, které s někým chodily nebo už byly vdané, na ni žárlily a obávaly se jí.

Její životem se ustavičně táhne řada mužů, kteří do něho vpadli, ale brzy zas vypadli. Je téměř nepochopitelné, že tak přitažlivá mladá žena nedovedla ulovit manžela. Slečna Kittredgeová to sama nemůže pochopit. Když se objeví nějaký nový muž, tetička se jí ihned ptá, zda má v úmyslu se oženit, a začíná se už znepokojovat, jak leta mijejí a všechny ostatní dívky se vdávají, jen její neteři se to pořád nemůže podařit.

Po návratu z Evropy bývala slečna Kittredgeová často hostem v piedmontském domě Londonových a přelétavý Jack se o ni začal ucházet. „Přiznám se k tomu, co už víš, cos jistě věděla od první chvíle. Hned jak jsem se prozradil, bylo to s úmyslem, abych Tě získal jako milenkou. Byla jsi tak upřímná, tak poctivá a úplně nebojácná. Kdybys byla bývala jen trošičku jiná, asi bych se byl pokusil jediným dotykem, jediným stisknutím ruky, jediným gestem a promluvením zlomit Tvou vůli a podmanit si ji... Pamatuji se, jak jsme seděli vedle sebe v kočáře a já jsem se tě zeptal „co dnes večer?“ — jak ses mi s úsměvem, ale bez výsměchu zadívala do očí — nezračila se Ti v nich ani stopa uražené

pýchy, uleknutí, strachu nebo překvapení — zadívala ses mi do očí tak dobromyslně a tak upřímně a prostě jsi řekla „dnes večer ne“.

Dva měsíce po rozchodu s Bessií Jack píše: „Někdy je mi divné, proč Tě miluji, a musím si přiznat, že Tě miluji ne proto, že máš krásné tělo a krásnou duši, ale protože máš v sobě opravdu jiskru života: projevuje se tím, jak se dovedeš oblékat, jak jsi odvážná, jak jsi citlivá, jak jsi hrdá, hrdá na sebe, na své tělo, a jak samo Tvé tělo je bezděčně hrdé.“

Zcela nepochybně se s Charmianou Kittredgeovou zapletl už v červnu, když byl sám v piedmontském domě, a jeho návrh Bessii, aby se odstěhovali do jižní Kalifornie, daleko od sanfranciského zálivu, jež tak miloval, byl zřejmě pokusem dostat se z povážlivé situace. Vždyť slečně Kittredgeové trvalo čtyři hodiny, než mu ten záměr rozmluvila.

„Škoda, že Jack aspoň místo jedné dcerušky neměl syna,“ tvrdil jeden z Jackových přátel, „pak by ho žádná moc na světě nebyla odtrhla od rodiny.“

Charmian Kittredgeová byla opravdově přesvědčena, že Jackovo manželství je nešťastné, a věřila, že Jack potřebuje takovou ženu, jakou by mu mohla být ona — ženu, která by se s ním toulala po světě a pouštěla se odvážně do dobrodružství, která by se doma nenechala spoutat povinnostmi k rodině a domácnosti. Asi ji k tomu měla teta Netta, která hned od počátku poskytovala milencům útulek, a tak se zdá, že se Charmian hodně přičinila o rozvrácení manželství Londonových, ačkoli Jack zřejmě nebyl nezranitelný, jak o tom svědčí jeho duševní vášnivý vztah k Anně Strunské a tělesná vášeň, jíž se nechal strhnout ve vlaku cestou do Chicaga. Je možné, že nebytí slečny Kittredgeové a zvláštního prostředí, v němž se s ní Jack seznámil, byl by asi zůstal s Bessií, ale na dobrodružné výpravy by se pouštěl bez ní a vracel by se domů jako do trvalého útočiště. Nelze však vyloučit možnost, že kdyby ho nebyla ulovila slečna Kittredgeová, snad by se to podařilo každé druhé ženě, nebo třeba každé desáté ... Jack ve svých povídkách často napsal, že na světě platí: kdo s koho, a kdo padne, toho sežerou vlci. Jestliže Bessie nebyla dost silná, aby si udržela manžela, po tom slečně Kittredgeové nic nebylo: měla právo si vybojovat, co chtěla, a vzít si všechno, co mohla pobrat. Jack ovšem ublížil třem svým nejdražším, z nichž dvě přivedl na svět, kdežto Charmian ani neměla komu ublížit.

Aby odvrátila podezření, často chodila na návštěvu k Bessii a Bessie se jí svěřovala se svými svízelemi v manželství. 12. září 1903 slečna Kittredgeová píše Jackovi: „Včera večer jsem byla u Bessie. Byla na mne milá — tak milá, až mě bolelo srdce. Prosila mě, abych někdy u ní zůstala na noc, kdykoli se mi bude chtít. Byla tak hodná a pohostinná, že se mohlo zdát, jako by váš rozchod byl jenom snem. Když na to všechno pomyslím, nemohu se někdy ubránit pocitu, že jsem opravdu zlá ženská, ale hned se ozve rozum a mně se uleví. Ale je to hrozné!!!“ Za pět dní zas píše: „Málem už přestávám Bessii podezírat, že na mne žárlí, ale nepřekvapilo by mě u ní nic, docela nic — kdoví, co ještě udělá! Je potouchlá, a já se nevyznám v lidech, kteří dovedou klamat.“ Slečna Kittredgeová zřejmě hrála svou úlohu znamenitě, protože jí 2. října Jack napsal: „S Bessii je všechno v pořádku, pokud jde o Tebe a o mne. Včera mi řekla, že neví, co by si počala nebýt Tebe, že jsi opravdu vynikající žena a snad žádná se Ti nevyrovná.“

Bessie velmi trpěla, ale byla hrdá, a proto o Jacka nebojovala a nedělala mu výstupy. Jackovy pohnutky jí vůbec nebyly známy, a tak se jen mlčky divila, jak muž, který se s ní mermomocí chtěl oženit, který tolik toužil, aby s ní měl děti, který v prvním roce jejich manželství od ní přijímal finanční pomoc a spolupráci na rukopisech, záznamech a shromažďování materiálu, který s ní tři roky žil v klidném a družném kamarádství, náhle a bez výstrahy ji chce opustit.

V soužení měla aspoň jednu přátelskou duši: Floru Londonovou. Bessie a Flora se tři roky hádaly, div nedohnaly Jacka k zoufalství, ale Flora poznala, co to je mateřská láska, protože si zamilovala malého Johnnyho Millera — a najednou se obrátila proti vlastnímu synovi, protože chtěl opustit rodinu. Jacka rozhořčovala matčina zrada, jak to nazýval, a nevěděl si rady. Začal trpět stihomamem, kdekoho obviňoval, že se proti němu spíkl s celým světem, aby ho odloučil od ženy, která pro něho „ztělesňuje lásku“. 22. září píše na plachetnici SPRAY slečně Kittredgeové: „Podle všech zásad lidské spravedlnosti jsem neměl utíkat z bojiště. Byla jsi má, byla jsi moje, a nikdo neměl právo mě vyštvat. A přece jsem se nechal k své hanbě vyštvat právě tou ženou, která mi je dražší než život.“

Měl v hlavě všechno tak popletené, že ačkoli kritika přijala knihu „Volání divočiny“ s velkolepou pochvalou

a svorně ji prohlašovala za „klasické dílo, které obohatí americkou literaturu“, nebyl vůbec schopen práce. Umínil si, že má-li dokončit „Mořského vlka“, musí vytáhnout kotvu a uniknout z prudkého vlnobití, v němž se octl. Dal si zevrubně prohlédnout plachetnici SPRAY a poslal peníze na cestu Cloudesleymu Johnsovi, který dosud žil v jižní Kalifornii a o jeho svízelných snad ani nevěděl. Zamířili spolu k ústí řeky Sacramento, celé dopoledne psali a odpoledne si zaplavali, stříleli kachny a lovíli ryby. Po životě tak zkomplikovaném ženami — jenže Jack si ty komplikace zavínil sám — působil na něho pobyt s kamarádem blahodárně. „Čím jsem s Cloudesleym déle, tím ho mám raději. Je poctivý a upřímný, je mladý a svěží, má smysl pro kázeň, jehož je v životě na lodi zapotřebí, a dovede dobře vařit — je zkrátka hodný a milý společník.“

Jako pravý muž přestal myslet na své svízele a každé dopoledne napsal povinných tisíc slov „Mořského vlka“. Měl jedinou starost, kterou se mu nepodařilo zapudit z mysli: od 14. září zas už byl bez peněz. Slečně Kittredgeové napsal: „Bessie si jistě stěžuje, že jsem skoro na mizině. Nemám k tomu daleko, před úplnou chudobou mě zachraňuje všeho všudy sto dolarů, a znenadání mi od lékaře přijde účet na 115 dolarů.“ Odložil „Mořského vlka“, pustil se do psaní povídky pro YOUTH'S COMPANION a celý měsíc promarnil literární nádeničinou, aby si trochu vydělal.

Každých pár dní se zastavil pro poštu v některém městečku: Stocktonu, Antiochu, Valleju. Jednou dostal od Bessie zprávu, že se Joan rozstala na úplavici. Hnal se zpátky domů k dcerušce a nehnul se od jejího lůžka ze strachu, aby neumřela. Když mu lékař řekl, že se její stav zhoršuje, byl Jack přesvědčen, že ho stihl trest. Přísahal si, že jestli se dítě uzdraví, zřekne se své velké lásky a nadobro se vrátí domů. Noviny psaly, že Londonovi se usmířili u lůžka nemocné dcerušky. Ale když se Joan začala uzdravovat, zachoval se Jack jako ten trosečník, když se zachránil na trámu z lodi a úpěnlivě se modlil: „Panebože, prosím tě, sešli mi nějakou loď a já ti slibuji, že teď už budu až do smrti hodný ... ale nedbej na to, panebože, tamhle už vidím plachtu!“ Jakmile byla Joan zas na nohou, Jack se vrátil na plachetnici SPRAY.

Měl sice zatrolené svízele, ale v minulosti udělal dobrou práci a ta dobrá práce mu vynesla odměnu. Kniha „Volání divočiny“ si získala všeobecnou oblibu, a protože měla

námět, jenž vzbudil všestranný zájem, kupovali ji čtenáři ze všech vrstev a v každém stáří. V listopadu už byla na třetím místě v seznamu nejlépe prodejných knih — na prvním místě byl „Levoboček“, na druhém „Malý pastýř z království nebeského“ a teprve za „Voláním divočiny“ byly romány jako „Paní Wiggsová ze zelného políčka“, „Rebeka z fármy u Slunného potoka“ a „Prasátka v jeteli“. V listopadu vyšla kniha „Lidé z propasti“, uvítaná téměř veskrze pochvalně — kritika o ní prohlašovala, že jako sociologický dokument nemá sobě rovné, že i kdyby Jack London nikdy nenapsal jinou knihu než „Lidi z propasti“, zasloužil by si slávu, že se nad ní všichni slušní lidé musí zamyslit a ptát, jak je možné, že se v civilizovaném světě dopustí, aby lidé takhle živořili. Anglický tisk, jenž podle všech předpokladů mohl Jacka prohlásit za opovážlivého vetřelce, mu vytýkal, že jeho kritika poměrů v londýnské čtvrti chudiny je přehnaně přísná, ale zároveň uznával, že se mu podařilo proniknout ke kořeni ožehavého problému.

Jack poslal Brettovi první polovinu „Mořského vlka“. Bretta ten příběh tolik vzrušil, že ihned poslal s vřelým doporučením rukopis do redakce časopisu CENTURY. Když se to Jack dověděl, užasle nad tím vrtěl hlavou — věděl, že CENTURY je náramně solidní a konzervativní rodinný časopis. Nebylo ani pomyšlení, že by otiskoval tak útočně a trpce realistický román. „Mořský vlk“ redaktora časopisu CENTURY úplně uchvátil a byl jím schválen k uveřejnění, ovšem s výhradou, že redakce smí druhou polovinu, na níž Jack ještě pracoval, patřičně proškrtat, budou-li muž a žena osamocení na ostrově, dělat něco, co by předplatitele časopisu mohlo pohoršovat. Jestliže s tím autor souhlasí, dostane honorář čtyři tisíce dolarů za vydání „Mořského vlka“ na pokračování.

Čtyři tisíce dolarů! Jen za povolení k vydání v časopise! Tolik, kolik dostal za veškerá autorská práva na „Volání divočiny“! Se všemi plachtami napjatými největší rychlostí překřížoval záliv, vplul do přístavu a zakotvil u své loděničky. Ihned po přistání telegrafoval do redakce CENTURY, že si mohou jeho rukopis proškrtat, jak jím bude libo, ale že „je absolutně přesvědčen, že druhá polovina jeho knihy stydlivého amerického měšťáka určitě nepohorší“. Smlouva tedy byla uzavřena, Jack se s ještě větší chutí soustředil na práci a za třicet dní horečného úsilí knihu dopsal. Časopis CENTURY zatím celému světu ohlašoval nevidaně rozsáhlou

a působivou reklamou, že v něm bude na pokračování vycházet „Mořský vlk“, nové dílo Jacka Londona, autora oblíbené knihy „Volání divočiny“.

Za několik měsíců měl Jack dostat čtyři tisíce dolarů na hotovost. Ale zatím, týden před vánocemi, byl takřka na mizině. V bance měl všeho všudy dvacet dolarů a pět centů a dosud ani nenakoupil dárky k vánocům. „Když se ‚Volání divočiny‘ tak dobře prodává, mohl by mi Brett snad poukázat dodatečný honorář jako dárek k vánocům? Náramně by mi přišel vhod.“ Kniha „Volání divočiny“ podle vydavatelské hantýrky „šla na dračku“, ale Brett Jackovi nepoukázal dodatečný honorář. Nebylo to asi z lakoty, protože Brett svému slavnému autorovi kolik let velmi štědře vypomáhal v nouzi. Ale smlouva je smlouva, a Brett si myslil, že kdyby Jackovi poslal ještě dodatečný honorář, porušil by smluvní podmínky a Jack by to možná jindy žádal také. Kdyby Jack nebyl veškerá autorská práva na „Volání divočiny“ jednou provždy prodal nakladatelství Macmillan, mohla mu kniha v několika příštích letech vynést málem sto tisíc dolarů — ovšem v případě, že by Brett za jiných smluvních podmínek věnoval stejné peníze na reklamu. Jack nikdy nelitoval, že veškerá svá autorská práva postoupil Brettovi — věděl, že Brett věnoval celé jmění, aby mu udělal jméno jako spisovateli, a dovedl ocenit, co taková reklama znamená pro jeho příští spisovatelskou dráhu.

Na Nový rok 1904 se už zdálo jisté, že vypukne válka mezi Ruskem a Japonskem. Jack nechtěl, aby k tomu došlo, jako socialista byl zásadně proti každé válce — věděl, že ve válce je dělnická třída každé země hnána před hlavně v zájmu nebo na ochranu kapitalistických tříd. Ale když válka přece jen vypukne, chtěl ji vidět zblízka. Studoval vojenskou taktiku a nauku o ničivé válečné výzbroji a chtěl se přesvědčit, nakolik moderní způsob válčení může zpusťtošit civilizované země. A mimo to byl přesvědčen, že si dobude věhlasu jako válečný dopisovatel. Znovu se mu otvírala cesta k dobrodružství, které znamenalo únik z manželských a milostných komplikací.

Noviny a časopisy začínaly vysílat své dopisovatele do Japonska. Jack dostal nabídky od pěti tiskových syndikátů a přijal tu nejvýhodnější — od Hearstova tiskového koncernu. Hned v prvním týdnu ledna navštívil redakci listu EXAMINER a nechal se vyfotografovat na střeše budovy.

V tmavém dělnickém pracovním obleku, ve vysokých botách a neoholený vypadal, jako by byl přišel rovnou ze směny v parní prádelně Belmontovy akademie. Na těch fotografiích je vidět, jak na něho dolehly svízele a úzkosti za půl roku poté, co se v chatě v Glen Ellen rozešel s Bessí: dávno už mu z obličejů vymizel chlapecký výraz a vypadá na nich ustaraně a ztrápeně.

Nařídil, aby z nakladatelství Macmillan posílali každý měsíc šek na smlouvenou zálohu Bessii, požádal Elizu, aby slečně Kittredgeové vypomohla, kdykoli bude třeba (tak se Eliza teprve dověděla, co se vlastně děje), a pověřil George Sterlinga, aby připravil k vydání „Mořského vlka“, než jej z nakladatelství Macmillan pošlou do sazby. Sedmého ledna roku 1904, pět dní před svými osmadvacátými narozeninami, odjel převozní lodí na Embarcadero a na s.s. SIBERII odplul do Yokohamy.

Na SIBERII se shromáždila veselá parta novinářů, kteří se ihned pokřtili na Supy. Hned první den po vyplutí z Honolulu při závodech ve skoku Jack doskočil na hůl, která se válela na palubě, a vyvrtnul si kotník levé nohy. Kotník pravé nohy měl oslaben po pádu z rychlíku, v němž se na černo vezl jako král trampů, a po této nehodě na lodi byl z něho mrzák. „Pětašedesát hodin jsem se musel potit v posteli a teprve včera mě jeden anglický dopisovatel vynesl na zádech na palubu.“ Ale neměl ani kdy hloubat nad svým zlým osudem, protože v jeho kajutě byla pořád tlačence Supů, kteří ho zabavovali vyprávěním o jiných válkách a jiných událostech, jichž byli jako reportéři svědky.

Když loď přistála v Yokohamě, zašel si na skleničku do každého výčepu, kde jako sedmnáctiletý výrostek pil bok po boku s Velkým Viktorem a Axelem, svými kamarády z Veselé trojky na SOFII SUTHERLANDOVÉ. Pak odjel vlakem do Tokia, kde se už shromáždili váleční dopisovatelé z celého světa a čekali jenom na povolení od japonské vlády, aby se směli vydat na bojiště. Válka ještě nebyla formálně vypovězena, japonské úřady odkládaly vyřízení jejich žádostí a zatím pro ně pořádaly projíždky po městě, přepychové hostiny a různé jiné zábavy.

Ale Jack nepřišel do Japonska, aby hodoval na banketech. Za dva dny už měl zdvořilých výmluv dost, důvtipným vyptáváním si sehnal informace a dověděl se něco, o čem ostatní dopisovatelé neměli ani tušení: že japonská vláda vůbec nemá v úmyslu pustit cizí válečné dopisovatele na

frontu. Jack pochopil, že chce-li posílat zprávy z války, musí se prostě sám nějak protlouct na bojiště. Supům o tom ani nehlesl, tajně vzedl do vlaku, který jel do Kobe a Nagasaki, kde se chtěl dostat na nějakou loď, která odpluje do korejského přístavu Chemulpo, odkud se japonské vojsko honem posílalo na frontu.

Několik dní se Jack na pobřeží sháněl po nějaké lodi, až konečně našel jednu, která měla 1. února odplout do Koreje. Koupil si lístek a už se těšil, jak bude u armády v Koreji a ostatní dopisovatelé budou dál v Tokiu hodovat na přepychových banketech. Aby si nějak zkrátil hodiny, které mu zbývaly do odjezdu, vyšel si do přístavu vyfotografovat kulie, jak nakládají uhlí a balíky bavlny. A za chvíli už uzel vnitřek celé řady korejských a japonských vojenských vězení, která u něho musela vzbudit touhu po poměrně pohodlném zaměstnání chodbaře v obvodní trestnici v Eric: japonská policie ho totiž zatkla jako ruského špióna! Mučili ho osm hodin ostrým výslechem, nazítki ho přestěhovali do většího vězení, kde ho znovu vyslýchali, a pak teprve ho konečně pustili na svobodu ... ale loď mu zatím ujela.

Jack se dověděl, že vojáci jsou povoláváni ze svých domovů hlavně v noci, a tak se na pobřeží začal zuřivě shánět po jiné lodi, která odpluje do přístavu Chemulpo. Konečně si osmého února zajistil přepravu na lodi KIEGO MARU, ale úřady ji těsně před odplutím zabavily. Měl zlost, že se možná nedostane na frontu včas, aby mohl posílat zprávy z první bitvy, a tak se v zoufalství nechal motorovým člunem zavézt k malému parníku, který odjížděl do Fusanu, kde zastavovaly lodi plující do Chemulpo. Jakž takž parníček ještě stihl, ale v takovém zmatku, že mu jeden kufr spadl do moře. Na parníčku byli sami Japonci a neměli tam ani sousto stravy, na jakou byl zvyklý, a přestože střídavě sněžilo a pršelo, musel Jack spát na nekryté palubě a vzpomínat na doby, kdy ležel celé noci na stupačce nákladního vagónu a neměl ani houni, aby se mohl přikrýt.

Ve Fusanu navázal spojení s jinou lodí, ale nedojela ani do přístavu Mokpo a už ji úřady zabavily a bez okolků vysadily cestující i s jejich zavazadly na břeh. Spěch, v jakém Japonci převáželi vojáky do Koreje, Jacka přesvědčil, že co nevidět bude vypovězena válka, a on byl ještě kolik set mil od Chemulpo a nemohl se dostat na žádnou loď. Přece ho sem poslali, aby podával zprávy z války, tak

by v tom musel být čert, kdyby se mu to nepodařilo. Ale jak se dostane na bojiště? A tu se v něm zřejmě ozval jeho děd Marshall Wellman, který si na opuštěném ostrůvku v zátoce jezera Erie sestrojil vor a dostal se na něm zpátky do Clevelandu. Dědeček Wellman Jacka jasně poučil, že se musí dostat přes Žluté moře v nekryté domorodé džunce a dál podél korejského pobřeží do přístavu Chemulpo.

Teploměr ukazoval čtrnáct stupňů Fahrenheita pod nulou, ale Jack už zažil v Klondiku šedesát stupňů mrazu; na Žlutém moři dula vichřice, ale o nic hůř než kdysi na Lindermanově jezeře; bylo to šíleně odvážné dobrodružství, ale o nic šílenější ani odvážnější, než když jako devatenáctiletý chlapec v dřavé loďce křižoval na zrádném sanfranciském zálivu v prudkém jihozápadním větru. A při pomýšlení, že se jedná o stejně nesnadnou a nebezpečnou cestu, jako když se vikingové v nekrytých člunech plavili přes Atlantický oceán, ho přeplavba v džunce tím víc lákala. Koupil domorodý člun, který se mu zdál vhodný k plavbě po moři, najal si jako posádku tři neohrožené Korejce a vyplul k přístavu Chemulpo.

„Nejdivočejší a nejnádhernější dobrodružství! Jen si mě představ jako kapitána džunky s posádkou tří Korejců, kteří nedovedou ani slovo anglicky. Před setměním jsme dorazili do Kun Sanu, ale bez stěžně a bez kormidla — stěžně odnesla vichřice a kormidlo se rozbilo. Připluli jsme tam v prudkém dešti a v ostrém řezavém větru. Škoda, žeš mě pak neviděl, jak si hovím v pohodlí — pět mladých Japonek mi pomáhalo při svlékání a koupání, pak mě uložily do postele a obdivovaly se mi, jak jsem krásně bílý.“

Přítích šest dní a nocí Jack strávil v mrazu na nekryté palubě, lodička se zmítala v prudké vichřici a každou chvíli jí hrozilo nebezpečí, že se potopí. Jack se zahříval jenom nad páneví, v níž hořelo dřevěné uhlí, a neustále byl přiotráven čpavým dýmem, ještě hůř než studenou domorodou stravou, již se musel živit. Obě nohy měl v kotnících zesláblé a připadal si jako mrzák. Jeho stav po přistání v Chemulpo vyličil jeden anglický válečný fotograf, který tam připlul poslední lodí upláchlou z Japonska:

„Když London připlul do Chemulpo, ani jsem ho nemohl poznat. Tělesně byl úplná troska. Uši a prsty u rukou i u nohou měl omrzlé. Prohlásil, že mu to nevadí, jen když se dostane na frontu. Musím říci, že Jack London patří k nejdovážnějším a nejhouževnatějším lidem, jaké jsem

dosud měl štěstí poznat. Je zrovna takový hrdina jako muži v jeho románech.“

Jack si koupil několik koní, naučil se na nich jezdit, najal si sluhy a podkonšho *mapu* a vydal se do severní Koreje směrem k ruským pozicím. Cesty byly střídavě umrzlé a zabahněné a každodenně se museli před setměním snažit, aby předhlonili japonské vojáky a v nejbližší vesnici si našli nocleh.

Po kolika týdnech rychlého pochodu, na němž zakusili neuvěřitelné strážně, konečně dorazili do Ping Yangu — dál na sever se už nedostal žádný válečný dopisovatel. Tam Jacka na týden uvěznili, protože ho na japonských vládních úřadech udali váleční dopisovatelé, které japonská vláda pořád ještě hostila v Tokiu a jejich redakce je bombardovaly telegrafickými dotazy, jak to, že Jack London může poslat depeše z Koreje, a oni nemohou? Úřady Jacka poslaly zpátky do Seulu, dvě stě mil za frontou, a vsadili ho tam na rozkaz z Tokia do vojenského vězení, protože neměl povolení, že smí doprovázet armádu.

Konečně se japonská vláda odhodlala k přátelskému gestu vůči válečným dopisovatelům z ciziny. „Čtrnácti z dopisovatelů, kteří se už nechtěli dusit ve vlastní štávě v Tokiu, bylo povoleno, že mohou provázet armádu, ale vedlo se nám jako na turistickém zájezdu uspořádaném Cookovou cestovní kancelář, jenže místo průvodců na nás dozřeli důstojníci. Viděli jsme jen to, co nám dovolili, a hlavní povinností těch důstojníků bylo starat se, abychom neviděli pokud možno nic. S hradeb města Wiju jsme se chvíli dívali na bitvu na řece Yalu, ale když tam Rusové pobili skoro celou japonskou rotu, zahnali nás zase zpátky do tábora.“

Když nastalo jarní počasí, dostali dopisovatelé povolení, že smí na druhý břeh řeky Yalu, kde v malém háji při chrámu pro ně vojáci postavili skvěle zařízený malý stanový tábor. Jack plaval v řece, hrál bridž a jiné hry, ale směl se pohybovat jen v okruhu půldruhé míle... a Japonci zatím bombardovali ruské zákopy.

Těžko se pracovalo, když byl člověk držen jako ve vězení čtyřicet mil za bitevní frontou, ale Jack dělal, co mohl. Pozorně odhadl úroveň japonské armády: „Japonští vojáci a výzbroj armády budí všeobecný obdiv.“ Psal články o bojové taktice a pohybech obou armád. Využil Bessiňých rad, jimiž ho kdysi vycvičila v používání fotografického přístroje,



Jack London „král ušticových pirátů”

páleníště Velkého domu



Jack London u kormidla jachty Roamer
v době vzniku Krále alkoholu





Jack London šest dní před smrtí

a fotografoval vojáky na pochodu, jak kopou zákopy, staví tábory, ošetřují raněné — byly to první válečné snímky, které se dostaly do Ameriky. Odeslal redakci devatenáct depeší a stovky fotografií, ale nevěděl, zda je v EXAMINERU dostali — musel počkat, až se to doví po návratu do San Franciska. „Mám toho až po krk!“ ulevoval si. „Jakživ už nepůjdu jako zpravodaj do války v Orientě! Jenom nás tu zbytečně otravují a zdržují. V žádné válce se s dopisovateli nejednalo tak jako v téhle.“ V červnu už chtěl domů — věděl, že zbytečně jen ztrácí čas. „Hrozně mě dopaluje, že tady nadarmo mařím čas a nemohu tu vykonat kus pořádné práce. Za tyhle měsíce ustavičného rozčilování mám jen jedinou náhradu, že jsem se lépe poučil o zeměpise asijských zemí a povaze asijských národů.“

Hlavně ho ponoukla k odjezdu pohružka, že bude postaven před válečný soud. Jeho *mapu* se jednou vypravil do armádního hlavního stanu pro píci koním, ale nedostal celý příděl na zákrok Korejce, kterého Jack už déle podezíral, že je okrádá. Když ho Jack z toho obvinil, Korejec se výhružně rozpráhl nožem a Jack ho pěští srazil k zemi. Ihned dostal rozkaz, aby se dostavil ke generálovi Fujimu, který mu pohrozil nejprísnějším trestem. V Tokiu si blahobytně žil Richard Harding Davis, a když se dověděl, že Jack London má být popraven, honem poslal spěšný kabelogram prezidentu Rooseveltovi a president ihned hněvivě protestoval u japonské vlády. Generál Fuji dostal rozkaz, že musí Jacka propustit na svobodu. Jack si sbalil tlumok a vrátil se do Tokia, kde dopisovatelé, s kterými se tam setkal před čtyřmi měsíci, dosud čekali na úřední povolení, aby se směli připojit k armádě. Davis doprovodil Jacka do Yokohamy a přísahal, že si jen počká, až uslyší první výstřel, a hned se vrátí domů, ale když tam už čeká kolik měsíců, nemůže přece odjet dřív, než uslyší aspoň jeden výstřel!

„Nezbývá mi než doufat, že se budu moci rehabilitovat v nějaké jiné válce!“ nařikal Jack. Ale nemusel si moc vyčítat: odeslal z Koreje tolik depeší jako žádný jiný dopisovatel a v redakci byli s jeho prací náramně spokojeni, protože od něho dostali kolik sólokaprů, obzvláště ty válečné snímky. Dobrodružný výlet do Orientu měl pro Jacka také tu výhodu, že Hearstovy noviny a časopisy uveřejňovaly jeho zprávy a články pod nápadně parádními titulký. Po velkém úspěchu knihy „Volání divočiny“

a působivé reklamě, již časopis *CENTURY* ohlašoval „Mořského vlka“, byl Jack London po návratu do San Franciska ve veřejnosti tak známý jako žádný jiný americký spisovatel.

S důvěrou očekával, že ho v přístavě s otevřenou náručí přivítá slečna Kittredgeová, ale místo ní ho přivítal soudní zřízenec a doručil mu úřední opis Bessieiny rozvodové žaloby. Mimo to si Bessie vymohla exekuční příkaz na Jackův plat, jež měl ještě dostat z *EXAMINERU* za své válečné reportáže. Pro Jacka to byla krutá rána, ale úplně se zděsil a srdce se mu bolestně sevřelo, když si v rozvodové žalobě přečetl, že Bessie udala jako příčinu rozvratu jejich manželství Annu Strunskou!

Jack si přál, aby Bessie požádala o rozvod, ale zatáhnout do skandálu Annu, s kterou se neviděl už dva roky...! Protřel si zvlhlé oči a hned se mu trochu ulevilo, když dále četl, že Bessie neobvinila Annu z nějaké špatnosti, ale jenom si v žalobě stěžuje, že spolupráce s Annou Strunskou na „Listech Kemptona a Wace“ byla příčinou, proč manžel vůči ní ochladl a zlohostejněl.

Na přístavišti nebylo po slečně Kittredgeové nikde ani sledu. Ale přišla ho přivítat Eliza a přinesla mu jeho poštu, v níž byl dopis od Charmiany z Newtonu ve státě Iowa, kde byla na návštěvě u tety. Psala mu: „Bude to pro Tebe bohužel asi zklamání, že nejsem v Kalifornii. Moji milovaní příbuzní jsou celí vystrašení tím skandálem a mě také jímá hrůza, když si pomyslím, co se bude v příštích měsících dít. Nechci, aby sis myslel, že jsem nějak ochladla, můj drahý. Věř mi, že od té doby, co se milujeme, ani v jediné chvíli jsem po tobě nešlela tak jako teď, ale v zájmu jiných i svém vlastním si musím zachovat rozvahu.“

Jacka ten dopis ranil, rozzlobil, znechutil. Když se po návratu do Piedmontu přivítal s Bessí a mazlil s dceruškami, napadlo ho: „Jestliže jsem měl odvahu plavit se v nekryté džunce po Žlutém moři ve vichřici a v mrazu, tak proč nemám odvahu setrvat u své ženy a při svých povinnostech, třebaže jsem se zamiloval do jiné?“

Hned nazítří ráno v celých Státech přinesly noviny senzační zprávu, že se paní Londonová rozvádí se svým mužem a že jako vinici udává Annu Strunskou. V San Francisku to noviny oznamovaly pod smělymi titulky a Jack si uvědomil, že od té chvíle se bude o všech, i nejnepatrnějších a nejsoukromějších podrobnostech jeho života psát na titulních stránkách novin. Na dotazy dotěrných reportérů

Jack jen odpovídal: „Mne v celém rozvodovém řízení jediné pobuřuje to, že se v souvislosti s mým rozvodem uvádí jméno slečny Strunské, poněvadž je to nesmírně citlivá žena.“ Slečna Strunská řekla reportérům: „Já jen žasnu. Za poslední dva roky jsem se s panem Londonem setkala jen dvakrát, protože jsem byla v New Yorku a v Evropě. Londonovy jsem naposled navštívila před dvěma roky, a tehdy ještě nebylo nikde ani nejmenší zmínky, že snad jejich manželství není šťastné.“ Na dotaz, proč Bessie uvedla v rozvodové žalobě jméno slečny Strunské, Bessie v roce 1937 odpověděla, že to byl omyl a že toho lituje. „Věděla jsem, že by mě Jack nikdy neopustil, leda kvůli nějaké jiné ženě, a neměla jsem tušení, která by to mohla být, leda jen slečna Strunská.“

Jackovi netrvalo dlouho, aby Bessii přesvědčil, že Anna Strunská za jejich rozchod vůbec nemůže, a Bessie dala jméno Anny Strunské ze žaloby vyškrtnout. Dále Jack svou ženu upozornil, že bude-li se řídit radou advokátní firmy a bude-li trvat na zabavení jeho výdělků, shrábne ty peníze z velké části advokát a dětem z nich moc nezůstane. Bessie, nyní už docela zešedivělá, smutná, zatrpklá a nešťastná, zeptala se Jacka, zda jí postaví dům v Piedmontu, aby měla aspoň provždy zabezpečenou střechu nad hlavou pro sebe a pro děti. Když jí to Jack ochotně slíbil, odvolala svůj nárok na zabavení jeho příjmů a žalovala ho jen pro opuštění rodiny. Jack napsal slečně Kittredgeové: „Bylo k tomu zapotřebí veškeré síly mé vůle, abych se k Bessii nevrátil zpátky, kvůli dětem. V posledních osmačtyřiceti hodinách jsem prožíval krutý otřes — tak krutý, že se mi téměř zdálo snazší obětovat se pro mé maličky.“

Svěřil se však Bessii, že ta druhá je Charmian Kittredgeová. Bessie to sdělení přijala mlčky a ledově, řekla jen, že slečnu Kittredgeovou už víckrát nechce ani vidět.

V červenci Jack odjel do Glen Ellen, pronajal si tarr vilku od Ninetty Eamesové a čekal, až se slečna Kittredgeová k němu vrátí. Když mu napsala, že potřebuje peníze na cestu, poslal jí šek na osmdesát dolarů. Pořád mu psala, že se bojí návratu domů, protože ji budou lidé pomlouvat. Nakonec Jack už vybuchl: „Už toho mám až po krk. Někdo tady nehraje poctivou hru. Mluvil jsem o tom s Nettou a s Edwardem a oba jsou přesvědčeni, že ze strany Bessie se není čeho obávat. Vyplnil jsem šek, Edward si vyzdvihl peníze a poslal Ti je poštou...“ a pak následuje

deset nakvašených stránek, jak ho hrozně dopalují Ninetta Eamesová i Edward Payne — kteří ho měli ještě hodně dlouho dopalovat a duševně ubíjet.

Jediným potěšením v horkých letních týdnech mu byly dlouhé vyjížďky na plachetnici *SPRAY*. Kluci na břehu ho poznávali a pokřikovali na něho: „Haló, Jacku, co je nového v Koreji?“ Poslal peníze na cestu svému věrnému a oddanému korejskému sluhovi Men-jangovi a pronajal si prostorný byt na rohu Šestnácté ulice a Broadway, kde mu domácnost vedla Flora. Byla celá šťastná, že má syna zas pro sebe, zapomněla, jak se spolu pohádali, když opustil Bessii, byla roztomilá paní domu a dožírala na Men-janga, který měl na starosti úklid a vaření pro Jacka.

Jackovi začalo jedno z nejnešťastnějších a nejneplodnějších životních období. Byl nešťasten, že ztrácí obě děti, byl nešťasten, že ublížil Bessii i Anně, byl nešťasten, že nemá oporu v Charmianě, byl nešťasten, že promrhala čas a zdraví v Koreji a neudělal pořádný kus práce, byl nešťasten, že mu zdroj invence vysychá a slábne, že není schopen velkých myšlenek a nemá vnitřní sílu, aby dovedl koncipovat a uskutečnit velká díla. Z hlubin zoufalství napsal Anně Strunské: „Bloudím životem a zasazují rány kdekomu. A hodně jsem se změnil. Když jsme se spolu seznámili, byl jsem materialista, jenže mou spásou bylo nadšení. Ale po nadšení je teď veta.“

Jeho čtvrtá sbírka povídek „Víra mužů“, kterou v dubnu vydala firma Macmillan, šla tak dobře na odbyt, že v červnu měla druhé vydání a v srpnu třetí, ale ani to Jacka nepotěšilo. Dával za pravdu kritikovi, který v časopise *NATION* litoval, že člověk s takovými schopnostmi jako Jack pořád mrzne na severu. Jack tělesně i duševně malátněl a chátral. Dostal chřipku, a když se z ní uzdravil, dostal zase nervózní svědění pokožky, které mu působilo trýzeň. Nemohl cvičit, ubýval na váze, zhubl, zeslábl a znervózněl. Trpěl duševní sklíčeností a tělesnými neduhy a uzavíral se před lidmi.

V srpnu zaplatil šestnáct set dolarů za parcelu v Piedmontu, povolal si architekta, vyzval Bessii, aby si řekla, jaký dům si přeje, a dožíral na přípravné práce k stavbě. Po návratu z Koreje měl v bance čtyři tisíce dolarů z *EXAMINERU*, avšak do posledního dolaru je investoval do stavby domu pro Bessii, dokonce si na něj vzal dost vysokou hypo-

téku a zase byl úplně bez peněz. Umínil si, že nedopustí, aby mu chorobná melancholie rozvrátila osobní kázeň, a vrhl se do práce. Přečetl si několik knih, které vyšly v době jeho pobytu v Koreji, a psal do novin a časopisů; pustil se do novely o boxerech s titulem „Zápas“; přednášel ve všech socialistických organizacích v okolí; bezplatně mluvil v klubech a církevních spolcích, aby získal stoupence socialismu a tak uspíšil revoluci. Začal pracovat na své první divadelní hře „Zneuznané ženy“ podle jedné své povídky z Aljašky a veřejně předčítal a komentoval „Lidi z propasti“ a „Třídní boj“. Když jeho kožní nemoc začala polevovat, zase si zval přátele na středeční večery, chodil si s nimi zaplavat na piedmontské koupaliště a jezdil s nimi na výlety do kopců. Pilně pracoval a pilně se zabavoval, aby neměl kdy myslit na to, jak je nešťastný. Ale nedělal si klamné iluze o hodnotě věcí, na nichž pracoval. „Pořád se ještě hmoždím se ‚Zápasem‘. Vím, že to je nezdar, ale práce mi dělá dobře. Se ‚Zneuznanými ženami‘ se moc nenadřu, na velkou dřinu bych si netroufal.“

Jedinou jeho oporou byl Brett z Macmillanova nakladatelství. Poněvadž knihkupecké objednávky na „Mořského vlka“ dosáhly počátkem října dvaceti tisíc výtisků, Brett Jackovi zvýšil zálohy na honorář na dvě stě padesát dolarů měsíčně. Ubezpečoval Jacka, že to je opravdu skvělá kniha, a počátkem listopadu mu konečně sdělil velkolepou novinu, že knihkupecké objednávky na „Mořského vlka“, jeho desátou knihu vydanou za období ani ne čtyř let, dosáhly už počtu čtyřicet tisíc výtisků, ještě než kniha vyšla. V prosinci poslal Jackovi šek na tři tisíce dolarů — tolik, kolik si Jack vypočítal, že bude potřebovat, aby se zbavil břemena dávno splatných částek na pojištění, anuit na hypotéky a dluhů.

„Mořský vlk“ zapůsobil na veřejnost, jako když uhoří hrom — okamžitě vyvolal senzaci a kdekdo ho buď chválil nebo odsuzoval. Mnoho čtenářů urážely nebo pohoršovaly názory, které se v knize projevovaly, a zase jiní knihu zuřivě hájili. Kritika ji zčásti odsoudila jako krutou, surovou a pobuřující, ale většinou ji prohlásila za „vzácné literární dílo, které svědčí o geniálním nadání ... které se zaslouží o povznesení úrovně naší beletristické literatury“. Představovalo nový mezník v americké literatuře nejen velkým realistickým uměním a hojností postav a situací, jaké se v americkém románu doposud nevyskytly, ale také tím, že znamenalo posílení intelektuálního směru v soudobé romá-

nové tvorbě. Setkali se už předtím američtí čtenáři v některém románě s něčím tak hrůzně napínavým, s tak úchvatným a věrohodným vylíčením smrtelného nebezpečí, jako je zápas mezi spirituálními a materialistickými filosofickými názory, který se na škuneru PÁZRAK odehrává mezi Vlkem Larsenem a Humpem Van Weydenem? Zaujala je už v některém románovém díle tak názorně předvedená filosofická nauka natolik, že by se pro ni málem servali? Jack v „Mořském vlku“ dramaticky poutavým dějem zpopularizoval revoluční vědecké nauky devatenáctého století, tak aby byly srozumitelné velké spoustě čtenářů, kteří jakživi neslyšeli o vývojové teorii, biologii ani vědeckém materialismu. Tou knihou nepozorovaně prochází Darwin, Spencer a Nietzsche jako její neviditelní hrdinové. Tím, že Jack zdramatizoval učení svých milovaných mistrů, je v „Mořském vlku“ boj mezi dvěma myšlenkovými směry stejně napínavý jako zuřivá rvačka irských zedníků ve Weasel Parku v Jackově pozdějším románě „Měsíční údolí“ — a to se hned tak někomu asi nepodařilo!

Ke konci románu uvedl Jack do děje jedinou ženskou postavu, a tím pokazil dílo, které bylo a dosud je téměř dokonalou ukázkou romanopiseckého umění. Když literární kritika prohlašovala, že ta žena je neskutečná, Jack protestoval: „Já jsem se do takové ženy zamiloval a zobrazil jsem ji ve své knize, a kritikové mi budou tvrdit, že žena, kterou miluji, je neskutečná!“ Zobrazil v románě slečnu Kittredgeovou a ještě ke všemu ji vylíčil básnivě hysterickým slohem, jímž si navykl odpovídat na její dopisy. Všechno, co v „Mořském vlku“ přímo souvisí s milostným poměrem mezi ní a Humpem Van Weydenem, je nejhorší ukázkou rokokové přebujelého stylu devatenáctého století, ale v každém jiném ohledu je „Mořský vlk“ předchůdcem toho nejlepšího v literatuře dvacátého století.

Za pár týdnů po vydání se „Mořský vlk“ ocitl v seznamu nejlépe prodejných knih na čtvrtém místě za limonádovým brakem jako „Maškary“ od K. C. Thurstona, „Marnotratný syn“ od Halla Caina, „Nezhřešší“ od F. Marion Crawfordové a „Beverly z Graustarku“ od George Barra McCutcheona. Za tři týdny už všechny čtyři předhonal, dostal se na první místo, a tak se beletrie dvacátého století konečně vysvobodila z pout, která ji škrtila v minulém století. „Mořský vlk“ je dnes právě tak napínavé a hluboce pravdivé dílo jako v listopadu 1904. Zastaralo jenom

nepatrně. Mnoho kritiků pokládá „Mořského vlka“ za Londonův nejsilnější román — a čtenáři, kteří jej znovu vezmou do ruky, jsou jím okouzleni.

Slečna Kittredgeová se vrátila ze státu Iowa a Jack s ní prožil několik vášnivých, ale kratičkých setkání v Oaklandu a v San Francisku, načež zas odjela k Ninettě Eamesové do Glen Ellen. Potom se občas ještě několikrát sešli, horoucně se pomilovali a Jack jí napsal několik rapsodických listů, ale většinou byly jeho dopisy čím dál věcnější a zběžnější. Už v nich sám sebe nanazývá „obětí bohorovné vášně, která může pouhým polibkem usmrtit“. Znovu se v obraznosti zatoulal jinam. Slečna Kittredgeová o tom dobře ví. „Já vím, že v několika minulých týdnech Tě zcela zaujala jiná žena. Konec konců jsi ještě chlapec, drahý muži, a člověk do Tebe snadno vidí. Ale ten večer, kdy jsi přednášel o ‚Stávkokazovi‘, znamenal pro mne otřes a vážně jsem se nad tím zamyslela. Když jsi domluvil, dobře jsem si všimla, jak ji vyhlížíš mezi obecenstvem, viděla jsem, jak Ti zamávala rukou, viděla jsem, jak se upejpavě uculuje a rozpačitě kroutí — to je celá ona. Viděla jsem Tě v září Tvé cigarety, jak jste se pak sešli, a věděla jsem, že předešlý večer jste také byli spolu. Tady nejde jen o pouhý fakt, že jsi mi nevěrný — v tomhle ohledu nejsi bez úhony, tak jako většina mužů, já už jsem na to dávno připravena, že mi budeš nevěrný, a do jisté míry jsem se s tím smířila. V poslední době jsi vypadal velice šťastně a já jsem věděla, že příčinou Tvé rozjařeně nálady nejsem já. Byl to samozřejmě někdo jiný, a tak...“

V roce 1905 se Jackovo jméno každou chvíli octlo na titulních stranách novin — zajímaly se o všechno, co dělal. Ten rok pro něho začal celkem dost klidně výletem do Los Angeles, kam ho pozvala k přednášce místní organizace Socialistické strany. V losangelském vydání EXAMINERU o něm Julian Hawthorne napsal: „Na pana Londona je milá podívaná. Je prostý a bezprostřední jako bernardýnské štěně. V jeho statném, čilém a zdravém těle sídlí neobyčejně jasný a bystrý duch. Pan London má vřelé srdce, všeobslhlé sympatie a osobité názory — samostatné a odvážné hlásané.“ Jakmile se Jack vrátil do Oaklandu, pozval ho president Kalifornské university, aby přednášel studentům — velká pocta pro člověka, který byl před sedmi lety nucen zanechat

universitního studia a musel nastoupit do práce v parní prádelně. Zaútočil na studenty jednou ze svých nejohavnivějších řečí, pověděl jim, že se před jejich zraky připravuje revoluce, jaká ještě neměla obdoby v dějinách světa, a že jestli se včas neprobudí, překvapí je ta revoluce ve spánku. Když si po přednášce profesorovi anglické literatury stěžoval, že studentům se předpisuje jako četba literární brak, profesor mu odpověděl: „To bych neřekl, pane Londone. V našem novém seznamu povinné četby je uvedena kapitola z ‚Volání divočiny‘.“ Členové fakultního sboru se tomu zasmáli, Jack se začervenal, zabručel, že ho málem ještě prohlásí za svatého, a dal pokoj. Nazítří byl president university napaden, že Jacku Londonovi dovolil hlásat revoluci. President klidně odpověděl: „My jsme si pozvali Londona, a ne jeho téma. London si zaslouží, aby u nás mohl přednášet.“

Jack přijal pozvání, aby promluvil v klubu průmyslníků a obchodníků ve Stocktonu — mluvil tam prvně a dostal se do pěkné bryndy něčím, co se dá šílenou odvahou přirovnat k tomu, jak se vydal přes Žluté moře v prudce dující vichřici nebo jak si troufal do londýnských brlohů chudiny, aby napsal „Lidi z propasti“. Ve stocktonských novinách je to vyličeño živě, ovšem trochu tendenčně: „Přednášel v klubu průmyslníků a obchodníků, jako by měl před sebou nezbedné školáčky — ptal se jich, co kdo z nich ví o socialismu, vyčínil jim, že si toho málo přečtli a ještě méně toho viděli, tloukl pěstí do stolu a hulil mračna cigaretového kouře — takže se jeho posluchači, úplně vylekaní a zmatení, nezmohli ani na jediné slovo protestu.“

Ale nezůstali dlouho zticha: v závěru svého proslovu je Jack ohromil prohlášením, že ruší socialisté, kteří se v roce 1905 zúčastnili povstání a zabili několik carských důstojníků, jsou jeho bratři! Poté se obecnstvo vzbouřilo a nazítří se na titulních stránkách novin rozkřiklo po celých Státech: „JACK LONDON NAZÝVÁ RUSKÉ VRAHY SVÝMI BRATRY!“ Rozpoutala se zuřivá vřava, žádalo se na něm, aby své prohlášení odvolal, psaly se proti němu ohnivé úvodníky a v jedněch novinách dokonce stálo: „Je to žhář a rudý anarchist, měl by být zatčen a souzen pro velezradu!“ Ale Jack nic neodvolal. Ruší revolucionáři byli jeho bratři a nikdo na světě ho nemohl přimět, aby se jich zřekl.

Kalifornská společnost se už delší dobu snažila ze svého jediného geniálního spisovatele udělat salónního lva. „Socialismus je jeho koníček. Zabíhá trochu do krajností,

ale je tak mladý a originální! Socialistické názory jsou u něho jen chvilková móda, časem ho přejdou.“ Ale nyní mu byly brány do společnosti tak neprodyšně uzavřeny, jako by pořád byl tulákem „na trati“. Už ho nezvali na „narudlé čajové dýchánky“, jak jim říkal, ani na bankety, při nichž seděl v měkké bílé košili a nedbale uvázané kravaté uprostřed samých škrobených náprsenek — společnost konečně dospěla k názoru, že to Jack vždycky myslel vážně, když jim na večerech tak roztomile vykládal, že jako společenská třída jsou paraziti, že se rozrůstají jako plíseň.

Skandál ještě neutichl a Jack zase v jiné přednášce řekl, že William Lloyd Garrison v roce 1856 odsoudil otroctví a prohlásil „K čertu s ústavou!“ a že nedávno řekl totéž generál Sherman Bell, když potlačoval stávky. Hned ráno se opět stal hrdinou dne a noviny od západu až na východ, z Kalifornie až do New Yorku, vytrubovaly: „JACK LONDON POSÍLÁ ÚSTAVU K ČERTU!“ Dělal, co mohl, aby se ospravedlnil, že tohle není jeho výrok, ale noviny se jen zřídka zajímají o to, jakou dohru mají jejich senzační zprávy.

Svoboda tisku dovolovala licoměrníkům roztrhat člověka na cucky, ale nezakazovala rozumnějším lidem povědět své mínění. V sanfranciském věstníku BULLETIN, jistě nikterak radikálním, stálo: „Žhavá a upřímná nenávisť ke každému bezpráví, již plane revoluční srdce mladého Jacka Londa, je prodchnuta týmž duchem, jenž podnítil demonstraci proti nákladu čaje v bostonském přístavu. Je to duch, jenž naší republice nakonec uchrání to, co máme nejlepšího, neboť je opakem otrocky tupého respektu k ustáleným pořádkům — takový otrocký respekt je podmíněn otupělostí mozku a sobectvím.“

Za několik dní byl Jack pozván, aby promluvil v debatním spolku oaklandské vyšší střední školy. Když se to dověděl ředitel školy, zakázal studentům uspořádat schůzi ve školní budově. Znovu se toho chopily noviny a kdekdo v celé Kalifornii se pak přel, byl-li ředitel v právu. Sanfranciský deník POSTER jízlivě psal: „Socialismus je možná všechno to, co se mu vytýká, ale zákaz propagovat socialistické zásady je pro ně nejlepší propagandou.“

Jack měl radost, že se jeho zásluhou dělá socialismu tak rozsáhlá reklama. A zároveň tím vzrůstal i zájem o jeho dílo. V celých Státech šly skvěle na odbyt jeho knihy „Volání divočiny“, „Mořský vlk“ a „Lidé z propasti“, ale hlavně se hodně četly a hodně se o nich debatovalo. Lidé možná

nesouhlasili s jeho myšlenkou hospodářské demokracie, byli možná proti tomu, jak zrevolucionoval americkou literaturu, ale nikdo už nemohl popřít, že Jack London je nej přednější americký spisovatel mladé generace. A k tomu úspěchu mu dopomohli jeho nepřátelé!

Uprostřed největší vřavy, kterou rozpoutal svými socialistickými názory, vydalo nakladatelství Macmillan jeho knihu „Třídní boj“. Vzbudila tak velký zájem, že ihned vyšla v dalších vydáních v červnu, v říjnu a v listopadu — úžasný úspěch knihy revolučních statí v zemi, kde se zuřivě popíralo, že by něco takového jako třídní boj vůbec existovalo, kde se socialismus zesměšňoval a opovržlivě zlehčoval, kde se prohlašoval za mnohohlavou hydru, která požírá svá mládata. Jackův hlas byl hlas volajícího na poušti, ale začínalo mu naslouchat čím dál víc lidí, obzvláště mladých z dospívající generace, která se už začínala osvobozovat z okovů omezené mentality starých pionýrů a odhadovala, co lidských obětí stojí kapitalistický velkoprůmysl. S horoucí vírou četla Jackovy knihy. Po celé Americe se člověk dosud setkával s lidmi, kteří hrdě prohlašují, že Jack London z nich udělal socialisty — že u socialismu nevytrvali, za to Jack snad nemůže.

V březnu se znovu uvolil kandidovat za Socialistickou stranu ve volbách oaklandského starosty a dostal 981 hlasů, přesně čtyřikrát víc než v roce 1901. V dubnu odjel s Men-jangem do Glen Ellen a pronajal si od Ninetty Eamesové vilku Wake Robin za šest dolarů týdně. Pani Eamesová rozhlásila, že „Jack přijel domů k ‚mámě‘, protože měl v Oaklandu svízele“. Důvěřiví farmáři z okolí neměli o ničem ani potuchy.

V Sonomě bylo krásné jaro. Jack se zas dostal do dobré nálady a vrátila se mu chuť k práci — po melancholii, již v zimě trpěl, nebylo ani sledu. Za povídku uveřejněnou v BLACK CAT dostal tři sta dolarů a za dvě stě padesát dolarů si koupil jezdeckého koně, na němž nezdolná slečna Kittredgeová přijela do Glen Ellen až z Berkeley, třicet mil daleko. Po stezkách mezi vínově zbarvenými manzanitami a madrony si spolu vyjížděli na koních do santálových a borovicových lesů na hoře Sonoma. Vzduch byl čistý a omamně vonný, a když vyšel měsíc v úplňku, údolí bylo zatopeno prozářenou bílou mlhou. „Teď už vím, proč Indiáni to údolí pojmenovali Měsíční údolí,“ říkal Jack.

V plném rozmachu tvůrčí síly napsal novelu „Bílý tesák“,

zase knihu o psu jako „Volání divočiny“, v níž se však Bílý tesák nenavráť z civilizovaného světa do panenské přírody, ale naopak opouští divočinu a zůstává s lidmi. Tato kniha nedosahuje umělecké hodnoty „Volání divočiny“, ale je to krásné a dojemné vyprávění o psu, vzrušující a napínavé. Jack přitom ještě každý týden psal celostránkové literární kritiky pro Hearstův koncern: v referátě o knize „Agitátor“ zdůraznil boj mezi dělnickými odbory a zaměstnavateli, v pochvalné kritice knihy „Dlouhý den“, která líčí krušný život mladé tovární dělnice v New Yorku, prudce zaútočil na nemožné zdravotní poměry v továrnách. Upton Sinclair s J. G. Phelps-Stokesem organizovali na východě Socialistické sdružení universitních studentů a na první schůzi výkonného výboru byl Jack zvolen za předsedu. Když v nakladatelství Macmillan vyšla jeho novela o boxerech „Zápas“ a kritika ji odsoudila jako vulgární a nepravděpodobnou, poslal Jack do redakcí výstřižky z novin na důkaz, že si boxer může prorazit lebku v týlu i na rohožce, když ho protivník srazí k zemi tvrdou ranou.

Než nastalo letní vedro, znovu vydal pár dolarů na postavení hráze v potoce a chodil si tam s přáteli zaplavat. Dopoledne pracoval, odpoledne se koupal a život ho těšil ... jenže se mu stýskalo po dětech. A pak na jedné výjízce koňmo do kopců, kde na horkých svazích opojně voněl pelyněk, octl se Jack náhodou na Hillově ranči, který se v rozloze sto třiceti akrů táhl od úpatí hory Sonoma vzhůru. „Rostou tam obrovské santálové stromy, některé jsou staré deset tisíc let. Jsou tam stovky borovic a dubů a spousty madronů a manzanit. Jsou tam divoké strže, potoky a bystřiny. Je to sto třicet akrů nejkrásnější panenské půdy, jaká se nenajde nikde v Americe.“

Úplně se do těch míst zbláznil, ihned si umínil že mu ranč musí patřit, a slečna Kittredgeová s ním vřele souhlasila. Jen když ho dostane pryč z velkého města, aby se nemohl stýkat s jinými ženami, ujde nebezpečí, že ho ztratí — před několika měsíci ho málem už ztratila. Jack si zajel do městečka Glen Ellen a dověděl se, že ranč je na prodej za pevnou cenu sedm tisíc dolarů. V pět odpoledne týž den už byl u Hillů, dětinsky rozdychtěný, a hned chtěl sjednat koupi. „Chauvetovi jste prý chtěl ranč prodat za sedm tisíc dolarů,“ řekl panu Hillovi. A pan Hill odpověděl: „Ano, tuhle cenu jsem si určil před deseti lety.“ „Já to koupím!“ prohlásil Jack. „Počkat, ne tak rychle,“ řekl

Hill. „Jděte raději domů a nechte si ještě pět dní na rozmyšlenou.“

Po Jackově odchodu řekl pan Hill své ženě, že od Chauveta žádal sedm tisíc dolarů, poněvadž chtěl ranč koupit jenom s právem na využití vodních toků, ale protože Jack chce ranč obhospodařovat, nemůže na Jackovi žádat víc než pět tisíc. Nazítří se Jack přihnal ještě dychtivější — celou noc nespál a dělal si plány, jak ten krásný ranč ještě zvelebí. „No, tak si tedy můžeme pohovořit o ceně...“ začal Hill. Jack vyskočil ze židle, rudý v obličeji, a vztekle vykřikl: „Tohle mi nemůžete udělat! Tohle nestrpím! Nesmíte zvýšit cenu! Každý mě tu chce ošidit! Dohodli jsme se na sedmi tisících a víc vám nedám!“ Hill se ani nemohl pokoušet zastavit prudký proud jeho protestů, a tak čekal, až se Jack vymluví, a pak řekl klidně: „Dobrá, pane Londone, tak tedy máte ranč za sedm tisíc, když mermomocí chcete.“

Po letech, když se Jack s Hillovými spřátelil, pan Hill mu pověděl, jak se sám ošidil o dva tisíce dolarů. Jack se tomu srdečně zasmál a řekl, že to je pro něho aspoň poučení, aby krotil zlost.

Ještě téhož večera si se slečnou Kittredgeovou zhruba načrtl plány. Na ranči je zchátralá stodola, která by se dala přestavět na konírnu s bytem pro šafáře. Jack bude na podzim na přednáškovém turné a ten muž zatím na velkém kusu pozemku vyčistí rozrostlý plevel, zasije obilí a travu, postaví vepřince a drůbežárny a vůbec dá ranč do pořádku, než bude Bessii povolen rozvod, a pak se Jack s Charmianou dají oddat.

Jack napsal Brettovi o sedm tisíc dolarů, aby mohl ranč koupit. Brett odpověděl: „Myslím, že není radno, aby si člověk, který má hrát ve světě důležitou úlohu, vázal ruce koupí nemovitostí, ať je to kdekoli ve Státech, třeba i v nejkrásnějším a nejúrodnějším kraji.“ Jack mu odepsal: „Chci právě koupit pozemky, z kterých nemohu mít žádný výnos. Nechci si dělat starosti s vyváženou obchodní bilancí. Chci tu jen pevně zakotvit, a natrvalo.“ Brett mu tedy rezignovaně poukázal sedm tisíc jako zálohu na honoráře za „Mořského vlka“ a Jack se s jásotem ujal vlastnictví na Hillově ranči. Pak si našel šafáře, koupil několik koní, hříbě, krávu s teletem, pluh, trakař, vůz, bryčku, postroje, slepice, krůty a prasata.

Po těch překotných nákupech zjistil, že mu nezbyl ani

dolar a že z nakladatelství Macmillan dlouho nemůže dostat další peníze. „Ty nákupy byly úplně nenadálé a po nich jsem docela na mizině. Také s obavami čekám dopis od Bessie, že potřebuje pár set dolarů, aby si mohla koupit koně a bryčku. Z nakladatelství Macmillan jsem vyždímal, co jsem mohl, abych měl na koupi ranče, a teď už nemám ani na postavení stodoly, natož domu. Abych sehnal honem nějaké hotové peníze, dal jsem se do psaní povídek.“

Na podzim už měl u firmy Macmillan tolik přebráno, že ho 4. října požádali, aby z nových záloh platil úroky. „A ještě potřebuji pro sebe a Men-janga na cestu do Chicaga, a mimo to i na výlohy pro Charmian, která tam za námi má druhý den přijet. Matka chce, abych jí zvýšil měsíční apanáž. Bessie také. A právě jsem zaplatil 100 dolarů v nemocnici za léčení matky Johnnyho Millera. Slíbil jsem zaplatit 30 dolarů za vytištění letáku s obhajobou chudáka Joa Kinga, kterému hrozí trest padesát let vězení a jehož případ projednávají soudy. Mám účet na něco přes 45 dolarů za lis na seno a v listopadu musím zaplatit 700 až 800 dolarů pojistného. Jak vidíš, jsem v pěkné bryndě a nevím, jak z ní vybědnu.“

Psnám si za celý život vydělal hodně přes milión dolarů, ale když dostal peníze do ruky, snad nikdy mu už nepatřily. Vždycky nejdřív utrácel a pak si teprve lámal hlavu, kde vzít potřebné peníze. Už v Klondiku o něm řekl Emil Jensen, že nikdy nepočítal, kolik ho co bude stát. Zřejmě ho vůbec nenapadlo, že kdyby utrácel peníze, teprve až si je vydělá, nejenže by neměl dluhy, ale jiné svízele. „Tenhle nešťastný zvyk utrácet peníze! Panebože, copak budu vždycky jeho otrokem?“

V říjnu se v doprovodu Men-janga vydal na přednáškové turné. Slečna Kittredgeová zas odjela k tetě do Newtonu ve státě Iowa, aby mu byla blíž. Jeho turné po téměř všech velkých městech na středním západě a na východě provázela hlučná reklama, protože se z něho rychle stávala jedna z nejromantičtějších soudobých osobností. Nejenže hlásal socialismus, vědecký evolucionismus, nový a robustní realismus v americké literatuře, ale mimoto představoval i mládí a odvahu. V ženských klubech byl oblíben, protože měl mužný zjev (zdůrazněný ještě prudkým hulením tabákového dýmu), vášnivě zaujetí pro sociálně reformní snahy, zářivý úsměv a nakažlivý smích. Vydělával denně stovky dolarů, v každém městě našel zábavnou a inteligentní

společnost a noviny o něm psaly přívětivě. „Jack London má kromobyčejné osobní kouzlo. Kdyby ho bylo možno rozmazlit, dávno by ho byly zhýčkaly kohorty jeho obdivovatelů. Ale naštěstí vůbec není ješitný.“

18. listopadu dostal v Chicagu od Bessie telegram, že soud jí rozvod povolil. Ihned telegrafoval slečně Kittredgeové do Newtonu, aby za ním přijela, že se dají oddat. Přijela do Chicaga v neděli v pět hodin odpoledne, ale Jack ještě neměl povolení k sňatku. Příslušný úřad byl samozřejmě zavřený, tak se Jack největší rychlostí rozjel drožkou chicagskými ulicemi shánět pomoc vlivných přátel. Návštěva u prvních dvou byla bezvýsledná a třetího vytáhl od večere, protože se znal s jedním městským úředníkem. Po dlouhé jízdě drožkou dorazili k bytu úředníka, který prohlásil, že udělá všechno, může-li být něčím nápomocen Jacku Londonovi, ale nač takový hrozný spěch? Proč nemůže počkat do rána, až budou úřady otevřené, a pak si všechno pěkně vyřídí v klidu a v pořádku? Jack nechtěl počkat, vynaložil veškerou svou výmluvnost a nakonec úředníka přemluvil, aby vsedl do kočáru, nechal se zavézt do jižní části města k úředníkovi, který byl oprávněn vydávat povolení k sňatku, a vytáhli ho z postele. Úžasem úplně oněměl, ale umíněný Jack ho nakonec přiměl, že se oblékl, odjel s celou společností na radnici, odemkl svou kancelář a vystavil povolení k sňatku. Po několika marných pokusech se jim podařilo nalézt smířčího soudce, který Jacka a Charmian Kittredgeovou oddal v knihovně ve svém bytě.

Druhý den, 20. listopadu ráno, se v celých Státech noviny pohoršovaly tím „neslušně kvapným sňatkem“, jak se vyjádřily. Až do té doby se lidé domnívali, že Jackův rozchod s Bessíí zavinily manželské nesváry a že si rozvod přejí oba. Přílišným spěchem s druhým sňatkem se Jack sám usvědčil, že opustil rodinu kvůli jiné ženě... a dostal se tak do nepříznivé situace. Až do soboty o něm psaly noviny přívětivě, ale v pondělí na něho nejen začaly hněvivě a rozhořčeně útočit, ale pokoušely se ho i zesměšnit. V úterý ráno se celé Státy dověděly, že „MANŽELSTVÍ JACKA LONDONA JE NEPLATNÉ“, poněvadž nový rozvodový zákon ve státě Illinois, doposud dost nepřesný, stanovil, že uzavře-li někdo sňatek dříve než za rok od povolení rozvodu, je manželství neplatné. Jack obléhaný reportéry měl zase pocit, že se mu děje křivda, a bránil se prudce a zuřivě: „Bude-li zapotřebí, ožením se ve všech státech Unie, hned jak se z jednoho

do druhého dostanu!“ Uveřejnilo se hodně vtipných anekdot o Jacku Londonovi, nesmírně chtivém ženění.

Kdyby byl počkal, až se vrátí do Kalifornie, kdyby byl z opatrnosti počkal aspoň pár měsíců, mohl se tomu skandálu vyhnout. Noviny by byly jeho sňatek odbyly jen stručnou zprávou. Ale takhle se vystavil útokům ze všech stran. Z kazatelen se proti němu pronášela celá kázání, v Pittsburgu a Derby byly z veřejných knihoven odstraněny jeho knihy a ještě tam bylo vydáno provolání k jiným městům, aby ten příklad následovala, syndikáty ženského tisku rozesílaly depeše ženským klubům, aby odřekly jeho přednášky, hodně novin psalo, že je divné, jak si lidé, kteří si sami nedovedou slušně urovnat soukromé záležitosti, mohou osobovat právo veřejně poučovat druhé. Některé články se dokonce pokoušely rozluštit záhadu, proč měl Jack London se svým druhým sňatkem tak naspěch. A na slečnu Kittredgeovou se útočilo, že rozbila Bessiino manželství.

Chování svého známého stoupence těžce odnesli socialisté v celé Americe. Kapitalistický tisk se toho chopil jako vítané zbraně: „Vidíte, jak si počíná socialista! Opustí ženu a malé děti...a tuhle nemravnost socialistické zřízení schvaluje! ... Vždyť by vyvolalo chaos ... socialismus je přece totéž co anarchie a zahubil by naši civilizaci...“ Jackovi soudruzi nadarmo protestovali: „Londonovo chybné počínání nemůžete svádět na socialismus! Socialismus takové věci odsuzuje stejně přísně jako kapitalismus!“ Vůdce socialistů přestoupil jistě společenské zákony, a proto se vrhali na socialismus. Když soudruzi Jackovi vyčetli, že socialistickou revoluci v Americe zpozdil nejméně o pět let, odpověděl s úsměvem: „Naopak, jsem přesvědčen, že jsem ji nejméně o pět minut urychlil!“

Co bylo vlastně pohnutkou toho zbrklého teatrálního gesta, proč o to Jack tolik stál, aby se honem honem uskutčnil svatební obřad, aby se před veřejností tak zpupně pochlubil novým manželstvím? Zčásti chtěl tím romantickým gestem udělat dojem na slečnu Kittredgeovou. Zčásti to byla zbrkllost a lehkomyšlnost člověka, který se nikdy neptá, co si svět o něm pomyslí. Zčásti to prostě byl kousek hrubozrnného Ira, který si z toho nic nedělá, ať si o něm myslí kdo chce co chce. A konec konců možná chtěl uchlácholit svědomí, které mu snad vyčítalo křivdu spáchanou na Bessii, a tím na všech ženách.

V tisku i z kazatelen se na něho útočilo ještě kolik týdnů.

U mnohých čtenářů to podlomilo důvěru v závažnost jeho literárního díla, ale když mu tisk udělal tak obrovskou reklamu, okruh jeho čtenářů se spíše rozšířil. Diskusi uzavřela poslední rána, kterou mu zasadil Averillský ženský klub. Na veřejné schůzi odhlasovaly dámy rezoluci, která požadovala, aby na školách udržovaných státem žáci dostávali učebnice zdarma, a pak ještě dvě rezoluce: první odsuzovala pěstování kopané na vysokých školách — a druhá Jacka Londona.

VIII

V lednu roku 1906 Jack na konci svého přednáškového turné přijel do New Yorku, kde už na něho čekal doktor Alexander Irvine, hezký a idealistický mladý Ir, duchovní církve Poutníků v New Heaven a předseda tamější organizace Socialistické strany. Přijel Jacka pozvat, aby pronesl přednášku na Yalově universitě. Jack s ním upřímně souhlasil, že by si neměl nechat ujít příležitost, když má možnost zaútočit socialismem na tři tisíce yalských studentů. Doktor Irvine se nejbližším vlakem vrátil do New Heaven a navrhl universitnímu debatnímu spolku, aby uspořádal přednášku Jacka Londona. Členové spolku se trochu zneklidněně usnesli, že pozvou Jacka Londona k přednášce na příští den večer pod podmínkou, že nebude mluvit moc radikálně.

Rozradostněný doktor hned potom navštívil malíře Delfanta, člena Socialistické strany, a Delfant zhotovil deset plakátů, na nichž uhlem načrtl podobu hezkého Jacka ve svetr s límcem až pod bradu nad spoustou šlehajících rudých plamenů a pod tím námět jeho přednášky: REVOLUCE. Ještě než se rozednilo, Delfant s doktorem Irvinem plakáty rozvěsili na stromech v universitním parku. Když se yalští usedlíci ráno probudili a spatřili ty křiklavé plakáty, úplně se zděsili. Jeden člen fakultního sboru si ihned pozval předsedu debatního spolku a sdělil mu, že přednášku musí odvolat, a nestane-li se tak, že bude spolku odňato povolení, aby se konala ve Woolseyho sále. Na Yalově universitě se nebude hlásat revoluce! Klubovní výbor by málem už byl uposlechl, ale doktor Irvine naléhavě členům domlouval, aby zkusili u mladších profesorů získat podporu proti reakcionářským starcům. První profesor, na něhož se předseda debatního spolku obrátil, byl William Lyon Phelps — udiveně se otázel: „Copak naše universita je klášter?“

Ta trefná a přitom mírná replika umlčela veškerý odpor. A v osm hodin večer byl Woolseyho sál přeplněn třemi tisíci studentů a třemi sty členů profesorského sboru — téměř celou universitou. Jack vystoupil na pódium a došlo se mu vřelého přijetí, načež mu všichni pozorně

naslouchali, když mluvil o tom, že ve všech zemích světa sedm miliónů lidí spojenými silami „vede boj za dobytí světového bohatství a za násilné svržení dosavadního společenského řádu. Říkají si soudruzi a stojí bok po boku pod praporem vzpoury. Je to obrovská lidská síla, je to úžasná moc, protože ti revolucionáři jsou prodchnuti láskou a úctou k člověku, ale naprosto nemají úctu k vládě mrtvých.“ Potom hodinu pitval kapitalistický systém z ekonomického hlediska a zakončil výzvou: „Kapitalistická třída zklamala v řízení světa, a proto musí být zbavena své funkce. Sedm miliónů příslušníků dělnické třídy vyzývá ostatní příslušníky dělnické třídy, aby se s nimi spojili a převzali s nimi řízení světa. Revoluce už nastala! Zastav ji, kdo můžeš!“

Přestože ve všech byla malá dušička, jak je tímhle vystražil (podle slov doktora Irvina), a přestože ani dvacet studentů z celého shromáždění nesouhlasilo s jediným jeho slovem, byl po přednášce zahrnut ovacemi. Yalova universita okázale odmítla nájemné za sál, takže veškerý výnos ze vstupného pětadvacet centů za osobu připadl ve prospěch místní organizace Socialistické strany — znamenalo to pro ni celé jmění!

Po přednášce Jack s doktorem Irvinem a s hloučkem nejlepších debatérů z universitního spolku šli společně ke starému Morymu na pivo a kus řeči. Jack se musel hájit proti všem, ale při zufivé diskusi prý neustoupil ani o krůček, i když nikoho neobrátil na svou víru, že soukromý kapitál vznikl buď konfiskací nebo krádeží. Když se ve čtyři hodiny zrána Jack a doktor Irvine vraceli do Irvinova bytu, čekala na ně skupina dělníků, aby Jackovi poděkovali za přednášku. Ráno v osm už zvonil u bytu vyčouhlý zrzavý reportér z yalského *Věstníku* a žádal Jacka Londona o interview, protože si tím prý v redakci udělá dobré oko. Ten reportér se jmenoval Sinclair Lewis.

Po dvoutýdenním přednášení byl Jack 19. ledna zase už v New Yorku, kde měl přednášet o „Nastávající hospodářské krizi“ na první veřejné schůzi Socialistického sdružení universitních studentů, které si ho zvolilo za předsedu. Zprávy o tom, jaká byla účast na jeho přednášce v nabitém sále budovy Grand Central Palace, se různí — podle nich tam mohlo být od čtyř tisíc do deseti tisíc lidí — ale přišel každý socialista z Atlantického pobřeží, který si mohl dopřát cestu do New Yorku. Ačkoli podle názvu to měla

být organizace studentská, bylo na schůzi mezi tisíci dělníků všeho všudy sotva sto universitních studentů. Jack přijel po přednášce na Floridě do New Yorku vlakem, který měl zpoždění, a Upton Sinclair, autor nedávno vydaného románu „Džungle“ z prostředí obrovských chicagských jatek a vlastně organizátor a mozek Socialistického sdružení universitních studentů, se snažil zatím upoutat zájem velice četného obecnstva výkladem, jak by se každý z nich mohl přičinit, aby se v Americe uskutečnila hospodářská demokracie. Když se v deset hodin večer konečně Jack přihnal v černém šviotovém obleku, v bílé flanelové košili, v bílé kravatě, v hodně vyšlapaných lakových střevících a s rozervlátou čupřinou, celé shromáždění vstalo a připravilo mu tak nadšené uvítání, jakého se mu nikdy předtím ani snad potom nedostalo: Eugene V. Debs byl jejich obrem, ale Jack London byl jejich bojovný mladý vůdce a prorok. Upton Sinclair píše, že obecnstvo Jackovi provolávalo slávu a mávalo mu červenými praporky celých pět minut, než ho konečně nechalo promluvit. Když předpověděl, že do roku 2000 bude kapitalistický řád všude svržen, všichni šleli nadšením, ačkoli věděli, že se toho soudného dne ani jeden z nich nedožije.

Jack zůstal v New Yorku celý týden. New York vždycky na něho účinkoval podivně: nervově ho vzrušoval a duševně skličoval. Doktoru Irvinovi se svěřil, že pokaždé, když tam přijede, má chuť proříznout si krk. Druhý den po přednášce v Socialistickém studentském sdružení byl na obědě s Uptonem Sinclairem a debatovali spolu o dalších plánech. Sinclair, horlivý abstinents, píše, že Jack zřejmě už pil, než přišel na oběd, že měl oči zarudlé a divně se mu leskly, a při obědě také ustavičně pil. Před příjezdem do New Yorku napsal Jack vášnivě nadšenou kritiku románu „Džungle“, která tu knihu o skandálních pracovních podmínkách na chicagských jatkách a jejího autora proslavila v celé Americe.

Když 3. února Jack přednášel v St. Paulu, rozstonal se a na sliznicích v ústech se mu vyrazily vřídky. Všechny příští přednášky odřekl, vrátil se do Glen Ellen, pronajal si od Ninetty Eamesové a Edwarda Payna vilku Wake Robin a začal si připravovat plány pro dobrodružnou výpravu, která měla zastínit všechna dobrodružství, jež doposud zažil, ačkoli už měl v životě spoustu vzrušujících příhod.

Loňského léta se v Glen Ellen slunil na koupališti a často předčítal shromážděným letním hostům z knihy „Sám na lodi kolem světa“ od kapitána Joshuy Slocuma. Kapitán Slocum se plavil v člunu dlouhém sedmatřicet stop a Jack žertem podotkl, že by se také nebál obeplout zeměkouli v malém člunu, třeba jen čtyřicet stop dlouhém. A po návratu do Wake Robin, když se už nabažil spoust lidí, velkých měst a pochvalného obdivu obecnstva, když si uvědomil, že je napadán ze všech stran a z nejrůznějších příčin, když cítil, že si kvapným druhým sňatkem a okolnostmi, jež jej provázely, zneprátelel i své známé v Glen Ellen, znovu se začal zabývat plány na plavbu kolem světa. Už odedávna se chystal na takovou výpravu do Jižních moří, byl to jeden z velkých snů, které by byl rád uskutečnil a k němuž mu daly podnět romantické příběhy Stevensonovy a Melvillovy. Tyto sklony v něm podporovala Charmian, která také měla hodně dobrodružnou povahu, i Ninetta s Edwardem Paynem, kteří zas doufali, že si Jack vezme na svou loď za kapitána Roscoa Eamese.

„Měl jsem na ranči ještě postavit dům, založit ovocný sad a vinici, zasázet živé ploty a vůbec ještě hodně práce. Počítali jsme, že se na tu plavbu vydáme tak za pět let. Ale začínalo nás neodbytně lákat dobrodružství. Proč bychom se na ni nevydali hned? Zatímco budeme pryč, ovocné stromy, vinná réva a živé ploty beztak porostou samy. A pak, člověk přece není věčně mladý.“ Jack jako vždy dospěl bez rozmyšlení a rychle k rozhodnutí, bez ohledu, co to bude stát, a umínil si, že také obepluje zeměkouli v malém člunu.

Deset dní po návratu do Wake Robin rozeslal dopisy redakcím několika nejrozšířenějších východních časopisů a snažil se získat od nich peněžní podporu pro svou dobrodružnou výpravu. „Člun má být dlouhý pětáctýřicet stop. Mohl by být i kratší, ale pak by se mi nepodařilo vmáchnout do něj koupelnu. Hodlám vyplout v říjnu. První zastávka bude na Havajských ostrovech a odtamtud se hodlám pustit do Jižního Tichomoří, na Samou, Nový Zéland, do Austrálie, na novou Guineu a přes Filipíny do Japonska. Pak chci obeplout Koreu, Čínu a Indii, a potom se dostat Rudým mořem do Středozemního moře, odtamtud chci proplout Černým mořem a přes Baltické moře do Atlantického oceánu, po něm do New Yorku a potom kolem Hornova mysu do San Franciska. Rozhodně chci přezimovat v Petro-

hradě a možná že z Černého moře zamířím po Dunaji k Vídni. Chci proplout po Nilu i po Seině, a proč bych jednoho dne nemohl zakotvit v Paříži na břehu Latinské čtvrti, s přídělí proti katedrále Notre Dame a se zádí namířenu proti Morgue? Nebudu mít naspěch — počítám, že mi plavba potrvá nejméně sedm let.“

Třebaže v sanfranciském zálivu bylo dost člunů vhodných k plavbě po moři, které si mohl koupit za rozumnou cenu, Jackovi to ani nenapadlo: chtěl se plavit ve vlastním člunu, a ne v nějakém cizím. V San Francisku byli zkušení lodní architekti, ale Jack chtěl mít člun vystavěný podle svých vlastních představ. V zálivu byly loděnice a v nich pracovali schopní lidé, ale Jack chtěl mít člun, který si postaví sám.

Umínal si, že si navrhne člun, který bude něčím výjimečným, tak jako všechno v jeho životě bylo vždycky něčím výjimečným. Vzal si do hlavy, že si nechá postavit „keč“, něco mezi jolou a dvojstěžňovou plachetnicí, co bude mít výhody obou těch plavidel, ale musel si upřímně přiznat, že jakživ nic takového neviděl, natož aby se byl v něčem takovém už plavil, že to je celé jen výmysl jeho mozku. Pohroužil se do problémů stavby lodí, a dokonce uvažoval už o tom, jaký motor by byl pro jeho loď nejlepší, jaký zapalovací systém a jaký rumpál by byl nejvhodnější, jak se nejlépe řídí plachty, zda návlečnými lanky nebo obrtlíky. Učil se vždycky rychle a dobře, a tak se za pár týdnů hodně poučil o moderní stavbě lodí.

Roscoe Eames se v dobách svého blahobytu plavil v malých člunech po sanfranciském zálivu. Jack měl důvěru v jeho zkušenosti a najal si ho za šedesát dolarů měsíčně, aby podle jeho vlastních plánů objednal v sanfranciské loděnici stavbu lodi a sám na ni dožíral. Dohoda se zamlouvala oběma stranám a poskytla stárnoucímu a zatrpklému Roscoovi příležitost po letech si zase vydělat peníze. Jack si umínil, že svou loď pojmenuje SNARK podle bájného draka z knížky „Honba za Snarkem“. Redakce časopisu COSMOPOLITAN navrhovala, aby loď pojmenoval podle jejich časopisu, ale Jack prohlásil, že ji tak pojmenuje pouze tehdy, když mu COSMOPOLITAN uhradí veškeré výlohy na stavbu, a on za to pak po cestě bude sbírat přihlášky na předplatné na COSMOPOLITAN MAGAZINE. Počítal, že stavba SNARKU bude stát sedm tisíc dolarů, a řekl Roscoovi: „Nešetř na ničem. Ať je na SNARKU všechno

jen prvotřídní. A žádné ozdoby: mně stačí ohoblované dřevo. Investuj peníze hlavně do konstrukce. Především musí SNARK být loď hodně pevná, že se jí hned tak žádná nevyrovná, a musí hodně vydržet. Je to jedno, kolik bude stát, jen když bude hodně pevná a silná, a já zatím budu psát, abychom ji měli z čeho zaplatit.“

Jakmile vypravil Roscoa s plány na loď a s šekovou knížkou, které směl použít podle vlastního uvážení, začal přemýšlet o svých příštích pracovních plánech. Už čtyři měsíce neudělal kus tvůrčí práce. Jenom četl knihy, které si objednal z Anglie, mezi nimi „Příběh Abův“ od Stanleyho Waterlooa, jeden z prvních pokusů o literární zpodobení lidského života v pravěku, kdy člověk ještě měl více společného se zvířetem než s lidským tvorem. Waterloo své knize věnoval deset let studia a práce, takže svědčila o velkých vědomostech, ale nevzrušovala fantazii. Jack dostal chuť sám se toho námětu chopit: vytvoří živé literární dílo, v němž by mohl umělecky zpracovat Darwinovu vývojovou teorii! Hned odpoledne si v hlavních obrysech načrtl plán knihy, přičemž se hodně opíral o román Stanleyho Waterlooa, a nazítří ráno se pustil do psaní. Měl pro svou knihu už název — „Před Adamem“ — který svědčí o jeho nadání připadnout na vhodné tituly pro literární díla. Dějem románu je sen soudobého chlapce, kterému se v noci zdá, že vyrůstá jako primitivní tvor v dobách pravěku — je to důmyslný nápad, jak názorně vylíčit kontrast mezi moderními a pravěkými podmínkami lidského života. A je to napsáno živě a pravdivě, takže čtenář věří, že člověk skutečně takhle žil, sotva se historicky nejvýznamnějším krůčkem vyvinul z opice. „Bude to první román ze života primitivního lidského tvora!“ jásal Jack.

Uvážil-li se, že to psal v dobách temna, kdy organizované náboženství potíralo vývojovou teorii jako dábelický výmysl svatokrádežných rouhačů, kdy metody vědeckého bádání ještě zcela neprorazily zdí rituálních dogmatů, byl román „Před Adamem“ velmi smělým pokusem o popularizaci Darwinova a Wallaceova učení, o jeho literární zpracování pro široké kruhy čtenářů tak, aby je lépe pochopily. Jack je skvělý vypravěč a jeho kniha o primitivních lidských tvorech je zrovna tak napínavá jako jeho povídky a romány z Aljašky. „Před Adamem“ sice není literární dílo prvotřídní hodnoty, ale je to zábavná a poučná četba, obzvláště pro mládež, u níž se začíná rozvíjet a bystřit soudnost.

Roscoe přivezl zásoby, najal dělníky a místo v loděnici a pak podal Jackovi zprávu, že 18. dubna 1906 bude v doku spuštěn na vodu kýl SNARKU. Večer předtím Jack mluvil hodiny o své plavbě a vzpomínal, že „jako malý chlapec jsem četl Melvillovu knihu ‚Typee‘ a dlouhé hodiny jsem si pak spřádal sny. Už tehdy jsem si pevně umínil, že buď jak buď se také musím dostat na Typee, až budu starší a silnější.“ Když ho časně zrána probudilo třesení podlahy, domníval se, že se mu zdálo o údolí na Typee a že se tolik chvěl vzrušením, až se pod ním roztrásla postel. Jakmile se rozednilo, osedlal si koně Washoe Bana, vyjel na vrcholek hory Sonoma a spatřil San Francisko v plamenech. Tryskem se vrátil do Wake Robin, stihl ještě vlak do Oaklandu, pak převozní loď do San Franciska, pořídil několik fotografických snímků a odeslal je s telegrafickou zprávou do časopisu COLLIER's.

Zemětřesení a požár v San Francisku měly vůbec tragické následky, ale způsobily i nepatrnější tragédii — kýl SNARKU nemohl být spuštěn na vodu. Nakoupené a zaplacené zásoby shořely, nebylo možno sehnat dělníky, z železáren zbyly trosky, vybavení lodí, objednané z New Yorku, se nedalo dopravit do sanfranciského přístavu. Mnoho týdnů se na SNARKU nemohlo hnout ani prstem. Jack necha Roscoa v San Francisku, aby co nejdříve zařídil dostavění lodí, sám se vrátil do Glen Ellen a napsal několik svých nejlepších aljašských povídek, například „Láska k životu“, „Běloch dobyvatel“, „Příběh Keeshův“, „Nečekaný“, „Negore“, „Zbabělec“ — začínal se totiž obávat, že ho bude stavba SNARKU stát víc než sedm tisíc dolarů, jak si původně odhadl.

V červnu byl kýl SNARKU konečně spuštěn na vodu. V té době už měl Jack námět k románu o ekonomických podmínkách, v jakých žije chudý lid, o němž delší dobu přemítal. „Začal jsem psát socialistický román, a ta práce mě úplně pohltila! Chci mu dát název Železná pata. Co tomu názvu říkáš? Chudáčkové kapitalisti! Mají to marné, proletariát si jednou udělá pořádek!“ Mocná obraznost, která mu přede dvěma měsíci vnukla námět románu z dob před desítkami tisíciletí, nyní ho zas ponoukla, aby děj „Železné paty“ posunul o sedm století kupředu: až bude objeven rukopisný záznam Ernesta Everharda ve skryši, kde byl uložen po krvavém potlačení druhé lidové vzpoury proti oligarchii. Anatole France, který Jacka nazval americkým Karlem Marxem, napsal v předmluvě k „Železné patě“: „Jack

London má geniální nadání postřehnout, co je všednímu davu skryto, a také jakousi zvláštní schopnost, která mu umožňuje předvídat budoucnost.“

Tu zvláštní schopnost zdědil po profesorovi Chaneym, jehož největším potěšením bylo předvídat budoucnost, a téměř vždy se zdarem. V „Železné patě“ Jack znovu dokázal, že myšlenky mohou vzrušit víc než děj a že ovládají svět. Stejně jako v „Mořském vlku“ a v knize „Před Adamem“ splatil dluh svým učitelům, Spencerovi, Darwinovi a Huxleymu, zpopularizoval jejich učení, zdramatizoval socialismus a revoluci, aby byly srozumitelné širokým masám. Karlu Marxovi by se „Železná pata“ byla jistě líbila.

Při psaní toho románu se Jack opíral o rozsáhlý materiál, jež si po leta pilně shromažďoval v lístkové kartotéce a jenž mu nyní poskytl s dostatek faktů, takže mohl napsat jednu z nejsřívějších obžalob kapitalismu, jaká se nalezne ve světové literatuře. Pro Američany byla ekonomie suchá a nudná věda a jakákoli diskuse o zásadách, na nichž spočívalo soukromé vlastnictví a rozdělení světového bohatství, byla právě tak nepřijatelná jako každá diskuse o vývojové teorii. Průmyslníci a bankéři vládli tímž právem, jež se před republikánskou revolucí nazývalo božské právo králů, a dělníkům se hlásalo, že mají být vděční za práci, kterou jim opatřují jejich moudří a hodní chleboďárci. Jack se prvně dostal do přímého konfliktu s církví, když na svém turné přednášel v Chicagu a jediní tamější údajně liberální duchovní odmítli promluvit na pohřbu guvernéra Johna P. Altgelta, protože prominul trest dvěma mužům odsouzeným pro účast na haymarketské vzpouře — tehdy se Jack přesvědčil, že církev je vypasená děvka, která přisluhuje průmyslovému kapitálu, stejně jako takzvané vyšší vzdělání na universitách, kde se vyučuje pouze tomu, co dovolí kapitalisté, kteří je podporují.

To všechno fakticky doložil v „Železné patě“, která patří k nejděsnějším a nejkrásnějším románům na světě, a jestliže není Jackovým nejlepším uměleckým dílem, jistě je z těch, která velice přispěla k uspěšení ekonomické revoluce. Jack London nejen předpověděl příchod fašismu, ale dopodrobna vylíčil i metody, jimiž vyvraždí veškerou opozici a zardousí dosavadní kulturu. „Železná pata“ se čte tak, jako by byla napsána včera... V celé tehdejší literatuře není napínavější kapitoly, než je ta, v níž Ernest

Everhard neohroženě vystoupí v Klubu filomatů (všimněte si, že to je podobný název, jako si vymyslel Chaney: Filomateáni), jehož členy jsou nejbohatší oligarchové z pobřeží Tichého oceánu. Právě tak se v tehdejší literatuře nenalezne proročtější výrok, než je odpověď jednoho z oligarchů Everhardovi, který ve své řeči odhalí marnotratnost a chamtivé kořistnictví kapitalistického řádu a předvídá, že se dělnická třída jednou zmocní průmyslu. „Jen vztáhněte opovážlivě ruce, byť jakkoli silné, po našich přepychových palácích — a my vám ukážeme, kde je síla a moc! Odpovíme vám řevem granátů a šrapnelů a svištěním strojních pušek. Rozdrtíme vaši revoluci a vás rozdupáme! Svět patří nám, my jsme jeho pány, a naším zůstane. Dělnická třída už od počátku dějin živoří ve špinavých brlozích a bude tam živořit dál, dokud je moc v rukou mých a našich.“

Bucharin ve své rozsáhlé bibliografii komunistické literatury uvádí jen jednu knihu amerického autora: „Železnou patu“.

Přirovnáme-li Jackův plán plavby v člunu dlouhém pětáctýřicet stop, v němž chtěl za sedm let obeplout svět, k odvážnému námětu a skvělé koncepci „Železné paty“, připadá nám chystaná výprava na SNARKU jako výlet převozním parníkem po sanfranciském zálivu. Jack tu knihu napsal s plným vědomím, že proti němu vyvolá zaryté nepřátelství ve vlivných kruzích a mezi mocnými; napsal ji s plným vědomím, že si ublíží nejen osobně, ale že ohrozí i své dosavadní dílo i příští, které snad ještě napíše. Bylo mu jasné, že nakladatelství Macmillan možná odmítne vydat „Železnou patu“, že se ji žádný časopis neodváží uveřejnit na pokračování, že si jí sám rozhodně nevydělá ani tolik, aby si vynahradil peníze vydané jenom na stravu za ty měsíce, co „Železnou patu“ psal.

A vezme-li se v úvahu jeho finanční situace v době, kdy si stavěl loď SNARK, tu ještě víc vynikne odvážnost, již bylo třeba k napsání této knihy. Aby splnil svůj vlastní příkaz: „Nešetř na ničem, jen ať je SNARK hodně pevná a silná loď“, objednal nejdražší podlažní prkna pro palubu, bez suků, aby jimi vůbec neprosákla voda; v podpalubí dal zřídit čtyři vodotěsné prostory, aby se vniklá voda nedostala z jednoho do druhého, kdyby v SNARKU nárazem třeba vznikla sebevětší trhлина; objednal drahý motor o sedmdesáti koňských silách až z New Yorku; koupil skvělý rumpál a k němu zvláštní pohon, tak aby se kotva spouštěla a vytaho-

vala pomocí lodního motoru. Nechal si v podpalubí zřídit koupelnu jako z pohádky, s různým přepychovým zařízením, například s pákami, jimiž se do vany mohla pumpovat mořská voda. Koupil také jolu a malý motorový člun. Jenom před SNARKU ho stála malé jmění — nechal ji zbudovat tak, aby ji nemohly zatopit ani největší vlny — nejkrásnější před, jakou u žádné lodi ještě jakživ neviděl. Reportéři, kteří k němu byli vysláni, aby s ním sepsali interview, byli všichni nadšeni, jak z něho najednou byl „úplný chlapec“, když se někdo jen zmínil o jeho námořní výpravě — jako když dítě dostane novou hračku a nemůže se dočkat, jak si s ní pohraje.

V létě zjistil, že už ve SNARKU utopil deset tisíc dolarů, že loď ještě není ani z poloviny dostavěna a že mu nezbyla ani vindra: utopil v té stavbě honoráře a zálohy od nakladatelství Macmillan i od svých anglických nakladatelů, čtyři sta dolarů od McClura za „Lásku k životu“ i všechny peníze za ostatní povídky, které napsal po dokončení románu „Před Adamem“. Mimo výdaje na stavbu SNARKU musel ještě vyplácet podporu Floře, Johnnymu Millerovi a tetě Jenny, která žila s Florou v jejím domě; Bessii a svým dvěma dceruškám, které také žily ve vlastním domě; musel živit Charmian, Roscoa Eamese, částečně i Ninettu Eamesovou a Edwarda Payna ve Wake Robin; a musel platit šafáře a nádeníky, kteří na Hillově ranči káceli a sázeli a potřebovali nářadí a stavební materiál.

V únoru rozeslal redakcím nadšené dopisy, ale jeho žádosti o zálohy byly chladně odmítány, ačkoli sliboval, že bude dodávat články o své plavbě. Kdekdo považoval za zázrak, že Jack sežene tolik peněz, aby mohl vydržovat své příbuzné, příživníky a ty, kdo pracují na jeho ranči, celkem čtrnáct lidí, a přitom ještě má na mzdu pro dělníky na stavbě SNARKU. Rozum ho nabádal, aby nechal SNARK nedostavěný, alespoň na čas, když nemá na úhradu účtů za stavbu. Nebo chce-li dál vyhazovat peníze na stavbu lodi, aby tedy zanechal práce na „Železné patě“. Ale Jack nedovedl dělat kompromisy: vášnivě psal dál každé dopoledne tisíc slov nového románu a odpoledne, v neděli a o svátcích vyráběl povídky, články a stati, jen aby si sehnal stovky dolarů, které polykala stavba SNARKU. Časopis COSMOPOLITAN mu uveřejnil sérii článků o jeho trampském cestování „po trati“, a dokonce mu poslal tisíc dolarů předem za článek o výpravě na SNARKU, který chtěl uveřejnit,

ještě než se na ni Jack vydá — redakce měla zřejmě vážné obavy, že člun dlouhý jen pětáctýřicet stop vůbec nedopluje někam do přístavu.

Jack si původně ustanovil, že vypluje 1. října — to už ho stavba *SNARKU* stála patnáct tisíc dolarů, a ještě nebyla ani z poloviny dokončena. Utopil v ní dva tisíce dolarů z časopisu *EVERYBODY'S* za vydávání románu „Před Adamem“ na pokračování, dva tisíce dolarů z časopisu *COSMOPOLITAN*, dva tisíce z *WOMAN'S HOME COMPANION*, odkud dostal zálohu na články o rodinném životě domorodců z tichomořských ostrovů, a ještě nejméně dva tisíce dolarů vydělané na sérii aljašských povídek — ale viděl, že chce-li pokračovat ve stavbě lodi, bude muset zatížit hypotékou dům koupený kdysi Floře. A ke všemu se ještě přesvědčil, že se dopustil tragické chyby, když stavbu *SNARKU* svěřil Roscoovi Eamesovi. Eames byl svárlivý a nedovedl přidržet lidi k práci, sám byl nevykonný, a lidé se tedy také práci nepřetrhli; byl užvaněný a zapomnětlivý, takže třikrát zaplatil za pohon k motoru, nakoupil materiál, pro nějž neměl upotřebení, a podpisoval předem šeky na zařízení, které se pak nikdo neobtěžoval dodat. Jack byl vůči sobě přísný a náročný a nikdy si netroufal psát o něčem, dokud si nezískal patřičné vědomosti, ale ani ho nenapadlo, aby kladl stejné nároky na lidi, které zaměstnával — měl je prostě za takové, jak si sami sebe cenili.

Situace se ještě zkomplikovala tím, že *COSMOPOLITAN*, odkud Jack dostal zálohu tisíc dolarů teprve po vytrvalém bombardování žádostmi, uveřejnil celostránkovou reklamu, jíž ohlašoval, že vysílá Jacka Londona na lodi *SNARK* na cestu kolem světa a bude o ní uveřejňovat jeho články. „A tak mi všechny firmy zvýšily ceny dodaného materiálu, dokonce mi některé odřekly už sjednané dodávky, poněvadž se domnívaly, že si *SNARK* nestavím za vlastní peníze, ale že mi na to platí bohatý časopis.“

COSMOPOLITAN mu ublížil nejen lživou reklamou, kterou Jack pocítoval jako dvojnásobnou krivdu, protože na jeho odvážnou výpravu vrhala stín a budila dojem, že se na ni vydává jakoby na objednávku, ale ke všemu ještě tím, že redakce seškrtala jeho první článek o zamýšlené výpravě. Jack byl vždycky v dokonalé formě, když psal hněvivé dopisy lidem, kteří ho podle jeho domněnky chtěli využít. „Tohle je hanebné jednání. Nikdy jsem se ještě s žádnou redakcí nepohádal a doufám, že to tentokrát bude nejen

prvně, ale i naposledy, ale bude to stát za to. Buď budeme spolupracovat poctivě, nebo vůbec ne. Upřímně řečeno, nejradši bych smlouvu zrušil. Když se mnou nedovedete jednat slušně a poctivě, tak ať hanba padne na vaši hlavu. Nebudu s vámi dělat žádné cavyky. Chcete vědět, kdy vám pošlu příští článek. Ale napřed chci vědět pár věcí — jinak se ode mne nikdy nedovíte, kdy příští článek dostanete. To se spíš dočkáte soudného dne, než mého druhého článku. Já mám své věci promyšlené, a vy z nich nemůžete kusy vyškrtat, takové mrzačení si nenechám líbit! Kdo si myslíte, že jste, k čemu, že si troufáte zlepšovat mou práci? Myslíte, že budu do práce vkládat své srdce, své řemeslo a umění, a vy mi ji pak zabijete, jen aby vyhovovala vašim žurnalistickým choutkám? Rázně a jednou provždy odmítám spolupracovat s vaší redakcí!“

Ještě víc než marnotratné výdaje ho dopalovaly věčné průtahy. Slíbili mu SNARK do 1. listopadu, pak do 15. listopadu, a potom do 1. prosince. V zoufalství se odstěhoval do Oaklandu, poslal Roscoa domů studovat navigaci a dozrál si sám na dostavění lodi. Najal si čtrnáct dělníků, slíbil jim neslýchaně vysokou mzdu a ještě dolar denní prémie, když si s prací pospíší. Aby mohl těm závazkům dostát, musel si vzít hypotéku na ranč. Přestože už vydal obrovské částky, bylo 15. prosince do ukončení stavby SNARKU zrovna tak daleko jako předtím 1. října a Jack musel znovu odložit ohlášené datum vyplutí.

Noviny začaly otiskovat posměšné rýmovačky o loudavém panu Londonovi; redakci časopisu WOMAN'S HOME COMPANION dopálilo, že je COSMOPOLITAN předstihl uveřejněním článku o plavbě na SNARKU, a tak protestovala, že Jack porušil smluvní podmínky, vytýkala mu, že se dosud nevypravil, a žádala ho, aby ještě před vyplutím ze San Franciska napsal pro jejich časopis článek o domorodcích na ostrovech v jižním Tichomoří, a přátelé se s Jackem sázeli, že v ustanovený den zase nevypluje. Na Nový rok 1907 první vyhrál sázku šafář na ranči, čímž přibyla ještě další položka ke dvaceti tisícům dolarů, investovaným do stavby SNARKU. „A pak se sázky množily a zuřivě zvyšovaly. Přátelé se na mne vrhali jako harpyje a sázeli proti mně na každé datum, které jsem si určil. Byl jsem zbrklý a umíněný. Sázel jsem se s nimi pořád, dál a dál, a vždycky jsem musel platit.“

Noviny a časopisy dělaly Jackově výpravě na SNARKU takovou reklamu, že Jack dostával z celých Států tisíce

dopisů, v nichž ho pisatelé prosili, aby je vzal s sebou. Z devadesáti procent se nabízeli k jakékoli práci, a z těch se devětadevadesát procent nabízelo, že budou pracovat bezplatně. „Psali mi lékaři, chirurgové a dentisté, abych je vzal s sebou, že nežadají plat, reportéři, osobní sluhové, kuchaři, ilustrátoři, sekretáři, inženýři, strojníci, elektrotechnikové, penzionovaní námořní kapitáni, učitelé, univerzitní studenti, majitelé rančů, ženy z domácnosti, námořníci, lodníci.“ Jen jednomu z nich nemohl Jack odolat — mladíkovi jménem Martin Johnson z Topeka ve státě Kansas, od kterého dostal dopis na sedm stránek. Jack mu telegrafoval: *Umíte vařit?* a Martin Johnson mu telegraficky odpověděl: *Uvidíte!*, načež si honem našel práci v kuchyni v řecké restauraci v Topeka. V lednu už byl budoucí cestovatel po Africe v Oaklandu, připraven k vyplutí, ale *SNARK* ještě nebyl dostavěn. Jack zásadně platil správně každému, kdo pro něho pracoval, a tak mu na výplatní listinu ještě přibyla mzda pro Johnsona.

Ačkoli Jack už věděl, že Roscoe je naprosto nezpůsobilý, nevyhodil ho a nepřijal místo něho osvědčeného námořního kapitána, jakých mohl mít dost a dost a také za sto dolarů měsíčně, které po vyplutí platil Roscoovi. Nepřijal ani jednoho z tělesně zdatných námořníků, kteří ho prosili, aby je vzal s sebou, za plat i bezplatně. Jako inženýra a zároveň i lodníka si najal studenta ze Stanfordovy univerzity, Herberta Stoltze, statného a přičinlivého mladíka. A to měla být celá lodní posádka: Jack, Charmian, Roscoe Eames, Martin Johnson, Herbert Stoltz a japonský kajutní sluha — ani jeden její člen kromě Jacka si nevěděl rady ani s plachtami, ani s kotvou.

Když dopsal „Železnou patu“, přečetl z ní první dvě kapitoly v Ruskinově klubu. Jedny oaklandské noviny o něm napsaly, že si své socialistické názory vždycky nejdříve přezkouší na oaklandském obecnstvu, poněvadž ví, že když je tohle publikum stráví, může je pak hlásat všude. Rukopis románu poslal Brettovi, který mu předpověděl, že v novinách o té knize nebude ani zmínka, nebo že se noviny vrhnou na autora i nakladatele, ale prohlásil, že to je dobrý román, a uvolil se vydat jej bez ohledu, jaké ho postihnou následky — chrabré rozhodnutí! Jenom žádal, aby Jack vyškrtl jednu poznámku, která by je podle jeho přesvědčení mohla oba dostat za mříže pro pohrdání soudem. Jack na to odpověděl: „Jestli mě odsoudí za pohrdání

soudem, rád si půl roku odsedím ve vězení, aspoň tam v klidu napíši pár knih a spoustu si jich přečtu.“

Měl věru proč toužit po poměrném klidu a míru v žaláři, protože se ze stavby SNARKU div nezbláznil. V únoru, rok poté, co rozeslal nadšené dopisy redakcím novin a časopisů, byla loď už tak dlouho rozestavěna, že chátřala rychleji, než ji stačili opravovat. Byla to už fraška, jak s posměchem hlásaly noviny — Londonovo tiché šlenství. Nikdo ho už nebral vážně, a tím méně lidé, kteří na stavbě pracovali. „Staří mořští vlci a zkušení námořníci putují v houfech na stavbu lodi SNARK a na odchodu nad ní jen krouť hlavou a vyslovují nejružnější obavy.“ Námořníci tvrdili, že se SNARK staví podle vadných plánů, že plachtoví je vadně rozvrženo a že loď na moři ztroskotá. Sázeli se, že SNARK nedopluje ani na Havajské ostrovy. Dokonce i Korejec Men-jang, který „pánovi“ věrně sloužil už tři roky, byl přesvědčen, že se na Havajské ostrovy jakživ nedostane, a otázkou „Přeje si Pánbůh, abych uvařil kávu?“ „pána“ přiměl, že ho vyhodil. Rozestavěnou loď ve dne v noci obklopoval hlouček posměvačných zvědavců.

Když Jack viděl, že „se všichni proti němu spikli“, že v San Francisku svou loď nedostaví, rozhodl se odplout na ní, tak jak je, do Honolulu a tam stavbu dokončit. Ale vzápětí vznikla v boku lodi trhлина a oprava trvala kolik dní. Když se loď konečně mohla spustit na vodu, uvízla mezi dvěma šalupami a těžce se poškodila. Dělníci ji vytáhli na podpěry a znovu ji začali spouštět na vodu, ale podpěry se rozsedly a SNARK zapadl předí do bahna. Celý týden se dvakrát denně, za přílivu i odlivu, dva vlečné parníky pokoušely vytáhnout SNARK z bahna. Když se Jack snažil pomoci jim rumpálem, zvláštní pohonné zařízení rumpálu se rozbilo, ozubené kolo se zaseklo a rumpál nadobro dosloužil. Jack v zoufalství spustil motor o sedmdesáti koňských silách, ale tu se zas roztrátila litinová deska, v níž byl motor zapuštěn a kterou si Jack objednal až z New Yorku — motor byl vynrštěn do vzduchu, přičemž zpřetrhal všechny řetězy, jimiž byl připoután, a zcela nepotřebný se překotil na bok.

Jack už ve své lodi utopil pětadvacet tisíc dolarů. Nejlepší přátelé mu radili, aby konečně uznal, že je všechno marné, že udělá líp, když nechá SNARK SNARKEM a vzdá se zamýšlené námořní výpravy. Ujišťovali ho, že bude-li na něm vůbec moci vyplout, znamená to vyloženou sebevraždu. Ale Jack protestoval: „Já se nevzdám!“ Celé dny zuřil na neschopné

dělníky, na vadný dodaný materiál, na obchodníky, kteří na něm vymáhali zaplacení účtů, na noviny, které se mu veřejně vysmívaly. Kdyby se přiznal, že je poražen, byl by celé veřejnosti pro posměch, a takovouhle hanbu by nikdy nepřežil! Dostojí svému slovu. I kdyby to měla být jeho smrt, dopluje na SNARKU do Honolulu! Raději zhynout smrtí hrdiny v Tichém oceáně, než být pro posměch dělníkům a obchodníkům, kteří na něm jen vydírají peníze, novinám, které ho pronásledují jízlivými nářázkami, davům zvědavců, kteří se mu smějí jako bláznovi, kteří by se ochotně vsadili, že se na SNARKU jakživ nedostane do Honolulu, ale nikdo proti nim nechce vsadit ani dolar, i kdyby mohl shrábnout dvacetinásobnou výhru!

„S obrovskou námahou a v potu tváře jsme konečně dostali SNARK z rozsedlých podpěr a zakotvili jsme jej u mola v oaklandském městském přístavě. Na nákladních vozech jsme si dali z domova přivést lodní výstroj, knihy, houně a zavazadla s osobními potřebami a se šatstvem. A zároveň se v překotném zmatku na loď nakládalo všechno ostatní — dříví a uhlí, voda a vodní nádrže, zelenina, zásoby potravin, nafta, motorový člun a jola, a na palubu se nahrnuli přátelé i ti, kteří se vydávali za známé přátel naší posádky. Přišli také reportéři a fotografové, i docela cizí lidé, potrhlí zvědavci, a nakonec všechno zavalila mračna uhelného prachu, jež vítr přivál z přístavního mola.“

Ale dlouhé, srdcervoucí soužení přece jednou skončilo: měli vyplout v sobotu, 20. dubna 1907. V sobotu ráno přišel Jack na loď s šekovou knížkou, plnicím perem, pijačným papírem a s téměř dvěma tisíci dolarů na hotovosti — se vším, co si mohl vybrat na zálohách od nakladatelství Macmillan a z časopisů — a hodlal zaplatit účty sto patnácti firmám, které mu podle jeho uznání posečkaly s placením už hodně dlouho. Ale místo inkasistů od firem přišel exekutor od Federálního soudu a přibil na stěžen SNARKU oznámení, že se loď zabavuje na základě žaloby podané věřitelem Sellersem, kterému Jack dlužil 232 dolarů! SNARK byl tedy uvězněn v přístavu a nesměl se odtamtud hnout. Jack zoufale sháněl po celém městě své věřitele, šerifa, starostu, kdekoho, jen aby loď vyprostil ze zajetí. Ale nenašel nikoho — všichni na neděli odjeli z města.

V pondělí ráno se opět posadil na palubě SNARKU a rozdával věřitelům zelenáče, zlaté mince i šeky, tak zaslepený zlostí a rozvzteklý zklamáním, že ani nebyl schopen

zkontrolovat si jednotlivé položky v účtech a přesvědčit se, zda skutečně dluhuje tolik peněz a zda je nezaplatil už dříve. Nakonec to všechno sečetl a zjistil, že ho SNARK, jehož motor o sedmdesáti koňských silách byl už jenom neužitečnou přítěží s pohonným zařízením rozbitým na padrt, jehož záchranný člun nabíral vodu a motor měl rozbitý, jehož jediný barevný nátěr se už loupal — že ho tenhle SNARK stál třicet tisíc dolarů!

Jack — okradený, zesměšněný, uštvaný, prohlašovaný za beznadějně pošetilého romantika — pověsil na špičku stěžně svetr Jimmyho Hoppera, který se vyznamenal jako člen fotbalového mužstva Kalifornské university, a vlastnoručně vytáhl kotvu. A pak s navigátorem, který o navigaci neměl ponětí, se strojníkem, který se ve strojích vůbec nevyznal, a s kuchařem, který neuměl vařit, vypotácel se na SNARKU z přístavu, překřížoval sanfranciský záliv a propnul Zlatou bránou na Tichý oceán.

Zavinil si své nesnáze vlastní nepraktičností, ale způsobili je i chamtivci, s nimiž se dostal do styku. Když si prohlížel trámy v přídí, které ho stály po sedmi a půl dolaru, protože měly být z dubového dřeva, zjistil, že jsou z měkkého dřeva, v ceně nanejvýš tak po dvou dolarech padesáti centech. Zvlášť objednaná prkna na palubní podlahu se rozeschla a propouštěla vodu, která zaplavila kajuty, zničila zařízení stroje a zásoby ve skladu. Voda prosakovala z boků i dnem lodi a pak začala pronikat i stěnami nákladných vodotěsných prostorů z jednoho do druhého, i do toho, kde byla uskladněna nafta. Železné součástky lodního zařízení se mu lámaly v ruku, obzvláště ty, jimiž byla provlečena plachetní lanka. V pohádkově přepychové koupelně se hned první den polámal kdejaký kohoutek. A když si prohlížel zásoby, zjistil, že pomeranče byly dodány na loď už namrzlé, že jablka a zelenina, dopravené na loď už před původně ohlášeným vyplutím, jsou úplně zkažené a musí se vyhodit do moře, že se nafta vyliła do mrkve, vodnice je dřevnatá, topné dříví nechytá, uhlí se vysypalo ze shnilých pytlů od brambor a že je voda odtokovými rourami spláchla do moře.

Až za několik dní po vyplutí na širé moře Jack zjistil, že se Roscoe Eames vůbec nevyzná v navigaci, že se docela ničemu nenaučil za ty měsíce, kdy dostával plat, že nedovede

podle kompasu zjistit, kde se loď nalézá a kam pluje, že SNARK proděravělý jako řešeto bezcílně bloudí po Tichém oceáně! Jack vyhrabal učebnice navigačních předpisů a začal je studovat, pak vytáhl mapy a změřil si postavení lodi podle slunce. „Řízení plavby na moři podle slunce, měsíce a hvězd je zásluhou astronomů a matematiků úplná hračka. Celé odpoledne jsem seděl u kormidla, jednou rukou jsem je řídil a druhou jsem se učil počítat s použitím logaritmického pravítka. Dvě odpoledne v týdnu jsem dvě hodiny studoval všeobecnou nauku o mořeplavbě a obzvláště jsem se učil určovat zeměpisnou šířku. Pak jsem se pocvičil v užívání sextantu a výpočtu korekcí, a znovu jsem se zaměřil na slunce. Jakkak bych nebyl pyšný! Vždyť jsem dokázal zázraky! Naslouchal jsem hlasům hvězd a řídil jsem se jimi na širém moři.“

Dostali se do bouře, v níž Martin Johnson a kajutní sluha Tochigi dostali mořskou nemoc, která je sklátila na lože, a při všech svých ostatních povinnostech musel se ještě Jack, po kolena ve vodě, pokoušet v kuchyni uvařit něco teplého k snědku. Charmian se nejen s ním pravidelně střídala u kormidla, ale zastávala dvakrát denně čtyřhodinovou směnu na palubě a udržovala loď ve správném kursu na rozbourřeném moři a v temnotách, zatímco pět mužů v bezpečí spalo v podpalubí. Roscoe, který dal na loď dopravit za několik set dolarů speciálně konzervovaných potravin s vysokým obsahem vitamínů, seděl ve své kajutě a vydatně se jimi přikrmoval. Když se ho Jack zeptal, proč nevydrhl palubu a proč se vůbec nestará o čistotu na lodi, Roscoe odpověděl, že nemůže pracovat, protože má špatné trávení.

Ve špíně, uprostřed nebezpečí a zmatku, kdy se loď pod ním téměř doslova potápěla, seděl Jack na přední palubě a psal román „Martin Eden“, snad nejlepší román nejen ze všech, které napsal, ale i ze všech amerických románů. V původním rukopise, nadržápaném inkoustem, je pouze tu a tam změna, a to je důkaz, jakého se dopracoval kompozičního umění a jak úžasné se dovedl soustředit na práci. Po týdnu zas vysvitlo slunce, Martin Johnson a Tochigi zesláblí slezli s lůžek a Herbert Stoltz bez dozoru kapitána dělal, co mohl, aby loď udržel kolmo na směr větru. Jack psal jako obvykle tisíc slov denně a pomalu mu narůstal autobiografický román, v němž líčí, jak zápasil, aby zdolal svůj nedostatek knižního vzdělání, aby z drsného námořníka

za pouhé tři roky udělal kultivovaného člověka a úspěšného spisovatele. Hlavní postavy románu jsou on, Mabel Applegarthová, členové její rodiny a George Sterling jako básník Brissenden. Ruth Morcová, jak svou hlavní hrdinku pojmenoval, je přesvědčivá, protože je vytvořena podle živého vzoru — je to jeho jediná ženská postava mimo dělnickou třídu, která je věrohodná. „Martin Eden“ je román plný lidského tepla, drsný a realisticky věrný životu, a kupodivu i prorocký: básník Brissenden v něm vybízí Martina Edena, aby se přimkl k socialismu, a varuje ho, že jinak nebude mít nic, co by ho poutalo k životu, až jednou přijde úspěch a sláva. Ale Martin se svého socialistického přesvědčení zřekne a přesycen úspěchem spáchá sebevraždu utopením.

Když román po dvou letech vyšel, pozval ženský klub v San José Miru MacClayovou, aby o něm členkám na schůzi klubu udělala přednášku. Paní MacClayová ve své přednášce kritizovala hrdinku jako slaboušskou a zbabělou ženu, která Martinovi i sobě zničila život. Nemohla tušit, že bledá, éterická staropanenská žena v první řadě, která ji poslouchá s upřenými očima, z nichž září smrt, je Mabel Applegarthová.

Po sedmadvacetidenní plavbě se ukázalo, že velkolepá příď SNARKU, kterou si Jack dal tak zálibně a draho zbudovat, nestojí za nic, ale hlavně je nebezpečná, poněvadž je těžká a nevyhoupe se na vysoké vlny. A tu první spatřili zemi. Jackovi to bylo skoro líto — byl hrdý na svou navigační dovednost a podle jeho výpočtů měla nejbližší země být od nich vzdálena ještě sto mil. Brzy se však přesvědčil, že to je vrcholek hory Haleakala, která se vypíná do výšky deseti tisíc stop nad mořem, a že je vzdálen ještě celých sto mil. Jack si vždycky zakládal víc na svých tělesných než duševních výkonech, ale toto zjištění mu způsobilo tak velkou radost jako snad nic od té doby, co v tajfunu poblíž japonského pobřeží kormidlováním dokázal udržet ve správném kursu Sofu SUTHERLANDOVOU.

Nazítří časně zrána propluli kolem Diamantového mysu a přímo před sebou spatřili Honolulu. SNARKU vyplul vstříc velký motorový člun Havajského yacht-klubu s kabelogramy ze Států, že SNARK na moři ztroskotal. Komodor klubu je uvítal na Havajských ostrovech, doprovodil SNARK do Pearl Harbor a pozval Londonovy k sobě domů, aby se vykoupli v horké vodě a napili koktailů; a jakýsi

pan Tom Hobron jim dal k dispozici vilu na ostrově Hilo. Každý den ráno Jack probouzeli ptáci mynah. Šel si zaplavat do smaragdově zelené laguny pár kreků od vily a pak se nasnídal pod stromy u stolu, jež mu Tochigi vyzdobil rudými květy ibišku a lesklými růžovými korálky. Po snídani psal Jack v modrém kimonu u improvizovaného psacího stolu, který mu vynesli na trávník. Své nesnáze s dostavěním SNARKU a všechno, co zakusil, než byl SNARK spuštěn na vodu, dopodrobna vylíčil v článku „Nepochopitelné a hrůzné“, v „Dobrodružství“ vyprávěl o tom, jak dostával tisíce dopisů od lidí, kteří žádali, aby je vzal s sebou na svou dobrodružnou výpravu; o tom, jak SNARK zabloudil na moři, protože Roscoe Eames neuměl navigovat, a jak se sám naučil řídit plavbu lodi, vypověděl podrobně v článku „Jak jsem hledal cestu“. Zoufale potřeboval peníze, články byly zábavné a časopisy je uveřejnily. Napsal také tragickou povídku z aljažského prostředí „Rozdělat oheň“.

Celých dvanáct dní, co SNARK kotvil v Pearl Harbor, nešel se na něj Jack vůbec podívat. Teprve třináctého dne si k němu sám dovesloval a zjistil, že za celou tu dobu nebyly paluby ani jednou spláchnuty hadicí a že i s nepříkrytým palubním zařízením zůstaly vystaveny zhoubným účinkům tropického slunce. Ihned dal výpověď Roscoovi Eamesovi a Herbertu Stoltzovi a poslal je zpátky do Kalifornie. V novinách se americkým čtenářům vykládalo, že na SNARKU došlo k rozporům a hádkám. Jack nechtěl nic svádět na Roscoa, aby neublížil Ninettě Eamesové, a tak se vůbec nehájil. Poslal peníze na cestu Eugenu Fenelonovi, příteli George Sterlinga, aby se ujal práce na SNARKU jako strojník. Noviny pak psaly, že „Fenelon patrně nabyl zkušeností na moři, když jezdil jako silák po světě s cirkusem a předtím studoval na duchovního“. Fenelon přijel, několik měsíců se pokoušel dát SNARK do pořádku, ale pak se zas vrátil do Carmelu a nechal lodní zařízení ještě v horším stavu.

Havajské ostrovy byly „líbezné a obyvatelé byli roztomilí“. Redakce časopisů STAR a PACIFIC COMMERCIAL TRAVELLER uspořádaly na počest Londonových večerů, Jack s manželkou byli pozváni na recepci k princovi Kalamanaolovi a k Jejímu Veličenstvu královně Liliuokalani; všude je hostili a ukazovali jim nádherné ostrovní scenérie. Každý den byl novým a dramatickým dobrodružstvím: jednou byl Jack s princem Kalamanaolem na lovu ryb při světle pochodní, jel se

podívat na *luaus*, pohřební hody domorodců, zaplavat si v teplém moři v chladné záři měsíce, pobyl na ranči Haleakala na ostrově Maui. Ředitel ranče Louis von Tempsky mu ukázal, jak se shání dohromady stáda dobytka, jak se krotí a značkují divoká hříbata, a na koních si s Londonovými vyjel po neuvěřitelně krásných a nebezpečně strmých svazích hor vysokých osm tisíc stop, přes houpavé konopné mosty nad hlubokými, divokými stržemi ke kráteru sopky Haleakala, odkud měli vyhlídku na všechny Havajské ostrovy a na širé moře. Pobyt na ranči Haleakala Jackovi poskytl námět k článku „Dům slunce“.

Jack pobyl týden na Molokai, ostrově malomocných, kde se s Charmianou stýkali s malomocnými jako s úplně normálními lidmi, vysedávali s nimi bok po boku v jejich loveckém klubu a chodili s nimi střilet z pušek, ještě teplých, jak je předtím některý malomocný držel v rukou, a malomocní pro ně uspořádali koňské dostihy. Prosili Jacka, aby o jejich ostrově napsal článek, v němž by vylíčil pravdu a popřel zlomyslné pověsti, které se o něm šíří, aby se lidé ve světě dověděli, že malomocní na Molokai žijí pěkně a šťastně. Jakmile se Jack vrátil do vily na ostrově Hilo, ihned svůj slib splnil a napsal článek „Malomocní na Molokai“, v němž citlivě a tragicky, ale krásně vylíčil svůj tamější pobyt. Alexander Hume Ford, odborník v plavbě na přšbojovém prknu, ho naučil, jak se na něm plavit přes vysoké vlny, a přestože se přitom Jack na slunci tak spálil, že měl citlivou pokožku dva týdny posetou puchýři, napsal článek „Královský sport“, a tím jej v Americe zpopularizoval. Zamiloval si klidný život na překrásných ostrovech a mimo psaní článků pracoval i na svém románu „Martin Eden“.

Když série článků o trampském životě, které vycházely v časopise *Cosmopolitan*, byla připravena pro knižní vydání, Brett se písemně dotázal Jacka, zda dosud trvá na tom, aby mu ji nakladatelství vydalo jako „Cestu“, ačkoli mu on, Brett, může dokázat, že si tou knihou u čtenářů uškodí. Jack odpověděl: „V té knize jako ve všech ostatních jsem psal jen pravdu. Když čtenáři prostřednictvím mých literárních prací začali poznávat mé smýšlení, byl jsem napadán rozčilenými nepřátelskými útoky a nepříznivými kritikami. Ale já jsem to přestál. Odjakživa tvrdím, že kardinální vlastností dobrého spisovatele je upřímnost. Je-li tato má víra pochybená, zavrhně-li mě čtenářská veřejnost, pak jí dám sbohem, usadím se na svém ranči

a budu sázet brambory a chovat slepice, abych měl co jíst. Jsem takový, jaký jsem, protože jsem vždycky odmítal řídit se moudrými radami druhých.“

Ale jedné moudré rady přece uposlechl, a to mu možná zachránilo život: v polovině října vyplul z Hilo k Marquezským ostrovům s odborně vyškoleným kapitánem a holandským námořníkem. Kapitán Warren byl podmíněně propuštěn z oregonské státní trestnice, kde byl uvězněn pro vraždu, a námořník Hermann býval kapitánem na dvojstěžňové rybářské plachetnici svého otce, která lovila při holandském pobřeží. Škoda, že Jack nebyl rozumnější a nenajal si zkušeného námořníka, už když stavěl *SNARK* a než na něm vyplul k Havajským ostrovům, mohl si uspořít dvacet tisíc dolarů a nekonečné soužení. Jediný z jeho původní posádky, kdo se na dosavadní dobrodružné plavbě osvědčil, byl hezký dlouhán Martin Johnson, kterého Jack povýšil z kuchaře na strojníka a který byl na *SNARKU* opravdu užitečný. Za dva roky, co trvala plavba *SNARKU*, se i Charmian osvědčila jako věrná družka. Byla neohrožená, i tvář v tvář smrti, měla nevyčerpatelnou odvahu, dovedla vesele snášet strážně a v nebezpečí byla stejně spolehlivá jako muž. Ať pobývala s Jackem týden mezi malomocnými na Molokai nebo mezi lovci lebek na Šalomounových ostrovech, ať s ním jezdila na koni po konopných mostech přes tropické strže, nebo se s ním plavila v končinách Tichého oceánu, kam se doposud neodvážila žádná plachetnice, nikdy neztrácela kuráž a vždycky si věděla rady. V zlých časech dovedla zachovat klid a v dobrých byla veselou společnicí. Chtěl-li se Jack s někým toulat po světě, nemohl si nalézt lepší družku, než byla Charmian.

Za několik dní po vyplutí z ostrova Hilo si Jack přečetl v pokynech pro plavbu v jižním Tichomoří, že v dějinách mořeplavby není dosud zaznamenána ani jediná plachetnice, která by byla od Havajských ostrovů připlula na Marquezy, patrně proto, že rovníkové proudy a jihovýchodní pasáty nedají plachetnicím tím směrem proniknout až k Marquezám. „Ale *SNARKA* tahle nemožnost neodstrašila,“ napsal Jack, vesele pokračoval v plavbě a dorazil k Marquezám — byl to úžasný výkon, jak pro navigátora, tak i v plachtění. Jack unikl smrti asi jen proto, že měl v hlavě nápady ještě ke kolika románům a nesměl zahynout dříve, než je napíše.

Znenadání uvázli mezi pasátními větry a bezvětrím a *SNARK* stál kolik dní na moři bez hnutí. Potom se zase

zmítal ve vichřici, v prudkém dešti, na rozbouřených vlnách a v ojedinělých nárazech větru a každou chvíli se zdálo, že se maličký, děravý SNARK vpůli zlomí jako tříška. Za šedesát dní nespátřili ani plachtu, ani kouř z parníkového komínu, polovinu nádrží s pitnou vodou jim vlny spláchly do moře a před smrtí žízni je zachránil jen častý déšť. Jacka vždycky nejvíc vzrušovalo nebezpečí smrti a v těch dnech byl neustále u vytržení jako malý chlapec. Proplouval na SNARKU nezmapovanými končinami Tichého oceánu, lovil delfíny, žraloky a mořské želvy a vleže na přední palubě, s mořskou solí v nozdrách, příjemně rozhoupaný na plochých dlouhých vlnách psal denně povinných tisíc slov románu „Martin Eden“, nebo napínavé články, jako třeba „Napříč Tichým oceánem“. Za teplého počasí předčítal na palubě Charmianě, kapitánu Warrenovi, Martinu Johnsonovi, Hermannovi, Nakatovi (dobrosrdečnému Japonci, kajutnímu sluhovi, jehož měl náhradou za Tochigiho) a kuchari Wadovi ze Stevensonových knih o Marquezách a Tahiti, z Conradova „Tajfunu“ a „Mládí“ a z Melvillových románů „Bílá kazajka“, „Typee“ a „Bílá velryba“. Všechno minulé soužení se SNARKEM upadlo v zapomnění, jen když si Jack mohl říci, že splnil slib, jež si dal jako třináctiletý chlapec, nadšený čtenář každické dobrodružné knihy, kterou mu slečna Coolbrithová půjčila z oaklandské městské knihovny.

Po dvouměsíční plavbě SNARK dorazil k ostrovu Nukahiva v Marquezkém souostroví. „V prudkém pasátu od severozápadu jsme vytrvale udržovali jihozápadní kurs. Takhle to šlo deset dní a 6. prosince v pět hodin ráno jsme přímo před sebou spatřili zem, právě tam, kde jsme ji čekali. Propluli jsme na závětrné straně podél ostrova Uahuka, obepluli jižní cíp ostrova Nukahiva a večer jsme se v úplné tmě a v prudkých nárazech větru probili ke kotvišti v úzkém zálivu Taiohae. Řinkot řetězů při spouštění kotvy provázelo mečení vylekaných koz nahore na skalních útesech a vzduch byl prosycen opojnou vůní květů.“

Na Nukahiva způsobilo Jackovi velkou radost, že si mohl najmout klubovní budovu, kde Robert Louis Stevenson za svého pobytu na Marquezách často trávil odpoledne. Jakmile se nazířeli mohli vydat na cestu, vyjela si celá posádka na koních do nádherného údolí Hapaa, o němž Melville v „Typee“ psal, že je obydleno kmenem silných a bojovných lidí, kteří tam žijí jako v úrodném tropickém

sadě. Ale Jackovy mladistvé představy zde čekalo zklamání: když se konečně dostal do údolí Hapaa, byla z něho už neobydlená, truchlivá tropická divočina, kde ještě pár Marquezanů, kteří unikli pustošivým nemocem zavlečeným do těch končin „nepřemožitelným bělochem“, hynulo v bédných chatrčích na rychlé souchotiny. Jack napsal srdcervoucí článek o vyhynutí tohoto nádherného kmene a dal mu z úcty k Melvillovi titul „Typee“.

„Všchna síla a krása je tatam a údolí Hapaa je domovem jen několika nebožáků stížených malomocenstvím, elefantíazou a tuberkulózou. V tom báječném přírodním sadě život vyhynul.“

Po dvanácti nádherných dnech na Marquezách, kde Jack střílel divoké kozy a zúčastnil se hodů domorodců a podívané na jejich tance a slavnosti, SNARK zdvihl kotvu a proplul mezi Paumotanskými ostrovy k Tahiti. Jack si tam dal zasílat poštu, a tak se dověděl, že noviny znovu oznámily ztroskotání SNARKU někde v Tichém oceáně a jak námořníci v San Francisku vzpomínají na své proroctví, že se pozná teprve na moři, jak je konstrukce SNARKU vadná a jak je špatně vybaven plachtami. V mnoha novinách už byly nekrology, v nichž se upřímně truchlilo nad smrtí tak nadaného spisovatele; v jiných byl zas obviňován, že o sobě nedává schválně nic vědět, aby si udělal reklamu, a v jednom úvodníku se dokonce psalo, že má velmi chytrého tiskového agenta, jemuž dal plnou moc, aby mu touto reklamou, která ho nic nestojí, dopomohl k náhradě za peníze utopené ve stavbě lodi.

Jack byl na cestách teprve osm měsíců, ale po přečtení spousty nahromaděné korespondence se přesvědčil, že neseď-li pán doma, brzy nastane v jeho záležitostech úplný chaos. Oaklandská banka v domněnání, že je Jack někde na dně Tichého oceánu, vypověděla hypotekární půjčku na Flořin dům. Jiná oaklandská banka zas vrátila komitentům šeky, které Jack vystavil v Hilo, celkem na osm set dolarů, s poznámkou „Nedostatečné krytí“, a vzbudila v tisku senzaci.

Než Jack odjel z Glen Ellen, pověřil Ninettu Eamesovou plnou mocí, aby mu řídila jeho obchodní záležitosti. Sama si za to určila plat deset dolarů měsíčně, a ten si po jeho odjezdu samovolně zvýšila na dvacet dolarů, takže jí Jack včetně čtyřiceti dolarů nájemného za vilku Wake Robin, kde nebydlel, musel měsíčně platit šedesát dolarů. Při zkoumání účtů, které mu zaslala, se Jack dověděl, že na

přestavbu stodoly na Hillově ranči, aby měl kde bydlet šafář se ženou, utratila tisíc dolarů a vydala tisíc čtyři sta dolarů jenom za prosinec na apanážích pro Floru, Johnnyho Millera, tetu Jenny, Bessii a její dvě dcerušky, na mzdy, zásoby a nářadí pro ranč, na pojistné a údržbu vilky Wake Robin. Další účet na celkem tisíc dolarů byl třístránkový a obsahoval položky za výstroj SNARKU včetně veškerých zásob, počínajíc tisícem galonů nafty a končíc stovkou beden Jackových oblíbených egyptských cigaret a desítkou beden cukroví. Takové nehorázné výdaje, a k nim se ještě muselo přičíst tisíc dolarů měsíčně, které stála údržba a plavba SNARKU! Od firmy Macmillan dostal Jack za prosinec na honorářích pět tisíc pět set dolarů; od Reynoldse, svého příležitostného agenta v New Yorku, tři sta padesát dolarů jako honorář za uveřejnění povídky „Rozdělat oheň“ v časopise CENTURY: mimoto Ninetta Eamesová prodala časopisu WOMAN'S HOME MAGAZINE článek „Malomocní na Molokai“ a časopisu HARPER'S WEEKLY články „Jak jsem hledal cestu“ a „Nepochopitelné a hrůzné“; a pak ještě přišly peníze z anglických časopisů a nakladatelství, od skandinávských, německých, francouzských a italských nakladatelů — ale v prvním týdnu roku 1908 zjistil, že má všeho všudy jen šestašedesát dolarů a přitom vůbec není naděje, že by odněkud mohl ještě něco dostat.

Z Tahiti do San Franciska měla odplout s. s. MARIPOSA a Jack se rozhodl, že na ní odjede domů a pokusí se dát si své záležitosti do pořádku. Zůstalo tajemstvím, kde si sehnal peníze na cestu pro sebe a Charmian. SNARK svěřil kapitánu Warrenovi a posádce a vrátil se do Kalifornie. Jeho četní přátelé doufali, že jim MARIPOSA přiveze od něho zprávy, že je živ a zdrav, a tak užasli, když se dověděli, že přijel do San Franciska. Noviny jeho příjezd ohlašovaly nejsmělejšími titulky. Jeden reportér napsal: „Nelze slovy vylíčit kouzlo věčného Londonova úsměvu. Je srdečný a oduševnělý, upřímný a lahodí oku.“ Mnoho lidí mu zazlivalo, že plavby zanechal. Když kdekoho ubezpečil, že se příští týden vrací MARIPOSOU na Tahiti, přátelé se mu všichni nevysmáli, naopak mu ten úmysl vážně rozmlouvali a radili, aby raději zůstal doma. Zřejmě nevěřili tomu, co řekl reportérům, že dny strávené na SNARKU patří k jeho nejšťastnějším v životě.

Okamžitě telegraficky požádal nakladatelství Macmillan o zálohu na téměř dokončený román „Martin Eden“,

dostal ji, splatil z ní hypotéku na Flořin dům a vyrovnal v bance stále stoupající úroky z hypotéky na ranč. Uzavřel s časopisem HARPER'S WEEKLY smlouvu na sérii článků o plavbě SNARKU a z obdržené zálohy zaplatil své nejnaléhavější dluhy, dal Floře šek na dvaapadesát dolarů na únor, Bessii šek na pětasedmdesát dolarů a tetě Jenny na patnáct dolarů — to byly jejich měsíční apanáže. Když si prohlédl starší čísla časopisu WOMAN'S HOME COMPANION, bylo mu jasné, proč mu na Havajských ostrovech a v Papeete za všechno počítali dvojnásobnou cenu: po reklamě, kterou uveřejnil časopis COSMOPOLITAN, že Jacka vysílá na plavbu kolem světa, rozvázal s ním Jack smlouvu na články z plavby a uzavřel ji s časopisem COMPANION, ale ten se nezdržel, aby nenásledoval příkladu COSMOPOLITANU, a uveřejnil obdobnou reklamu.

V roce 1907 vyšly Jackovi čtyři knihy, o jednu víc než v rekordním roce 1902. Bylo mu teprve jednadvacet let a už měl vydáno dvacet knih — hýřil svým duševním bohatstvím stejně lehkomyšlně jako jméním, jež si tím bohatstvím získal.

Čtenáři v Americe dosud rádi čtou román „Před Adamem“, v němž Jack zdramatizoval evoluční teorii a život pračlověka. Když vyšla „Cesta“, veřejnost jí nevěnovala zvláštní pozornost, ale nyní se počítá k několika skutečně věrohodným pramenům o životě trampů. V knize „Láska k životu“ je několik Jackových nejkrásnějších aljašských povídek. Přestože ty povídky psal pro peníze, které potřeboval na stavbu SNARKU, svědčí jejich umělecká dokonalost o tom, že, i v takovém případě lze stvořit umělecké dílo. Vždyť i mnoho z těch, kteří mají nejlepší vůli napsat dobrou knihu a vůbec přitom nemyslí na zisk, mohou někdy stvořit brak. Rozhodující je nadání a nikoli, jak autor hodlá naložit s odměnou za svou literární tvorbu. Jack měl lásku k pravdě, schopnost jasně myslet, solidní vzdělání, hluboké pochopení pro lidi a odvahu říkat, co cítí a co si myslí. Mimo nadání a ryzí charakter měl ještě vrozený vypravěčský dar, vypěstěný pilným a inteligentním studiem. Skutečnost, že potřeboval peníze, nikdy ho nesvedla, aby v nárocích na svou literární práci polevil, nebo aby ji odbýval — a finanční úspěchy ho těšily, poněvadž pevně věřil, že dobrá práce zaslouží dobrou peněžní odměnu.

Ukázalo se, že Brettova předpověď o „Železné patě“ byla správná: tisk povětšinou neuveřejnil ani zmínku, že román vyšel, a pokud se o něm vůbec psalo, zároveň se prohlašovalo,

že „autor by měl být přísně stíhán zákonem“. O knihu se jinak nikdo nezajímal, kritiky měla nepříznivé, nedostalo se jí uznání a vůbec se neprodávala, leda mezi hrstkou amerických marxistů. Až za deset let se měla zase objevit jako nejlepší světový revoluční román a ruský lid za ni Jacka Londona úplně zbožňoval. Kapitalistický tisk ji přijal uštěpačně a socialistický tisk, jenž před rokem Jackovi trpce vyčítal, že si dělá výlety kolem světa na přepychové jachtě, když je doma tolik práce, psal o „Železné patě“ ještě uštěpačněji. Obviňoval Jacka, že zradil socialismus, poněvadž mu znepřátelil veřejnost hlášením krvavé revoluce, že tedy nemá co pohledávat ve straně, která je mírumilovná a chce, aby se socialismus postupně uplatňoval školním vzděláním, zákonodárstvím a hlasovacím lístkem, a nikoli smrtí na barikádách. Kapitalistický i socialistický tisk ho svorně nazýval nebezpečným živlem, ale za tři měsíce, v dubnu, mu socialisté tak dalece odpustili, že ho požádali, aby za jejich stranu kandidoval ve volbách prezidenta Spojených států.

Splnil svůj slib a na MARIPOSE se s Charmianou vrátil na Tahiti, odkud měl pokračovat v plavbě kolem světa, rozpočtené na sedm let. 9. dubna SNARK vyplul z Tahiti na ostrov Bora-Bora, klenot Polynésie. Na Bora-Bora Jack vyjížděl na lov ryb s domorodými rybáři; na ostrově Raiatea ho domorodci hostili a obdarovali tak štědře, že o takovém pohostinství civilizovanější země nemají ani ponětí; na ostrově Pago Pago byl hostem domorodého vládce. Při další plavbě k ostrovu Suva v souostroví Fidži se dostal SNARK několikrát do bouře a kolik dní bloudil na moři, protože se poškodil chronometr. K Suva, hlavnímu ostrovu skupiny Fidži, dorazili v červnu. Kapitán Warren, který v květnu propadl melancholii a dokonce dvakrát dostal záchvat zuřivosti, odešel na břeh a už se nevrátil. Zanechal SNARK v tak zanedbaném stavu, že nutně potřeboval různé opravy. Jack za Warrenem poslal jeho svršky a od té chvíle bez nejmenší nehody sám dělal kapitána na své lodi. Proplul mezi Šalomounovými ostrovy a pobýval na kokosovníkových plantážích v buši, „na samém kraji rozvěštěné divočiny, jaká snad není nikde jinde na světě“. Na ostrově Malaita, kde domorodí divoši připravili o hlavu hodně bělochů, Jack se společně se známými na lodi MANOTA

vypravil shánět mezi bušmeny lidi pro otrockou práci na plantážích. Napadli je lidojedi, vydrápali se na loď, chtěli ji vydrancovat a potopit a posádku bělochů chtěli *kai-kai*, čili sníst. Všem se zdálo, že se *MINOTA* už už rozbije o skalisko v moři, a tu domorodci začali na Jacka střilet otrávenými šipy. „Když *MINOTA* prvně narazila, nebylo nikde ani vidu po kanoích domorodců, ale za chvíli se začaly sjíždět ze všech stran, jako když zčistajasna začnou nad kořistí kroužit supi. Posádka lodi je namířenými puškami držela v šachu seřazené ve vzdálenosti asi sto stop a pohrozila jim smrtí, jestli se opováží blíž. A tak se drželi opodál a vzpírali pádly své kanoe v nebezpečném vlnobití přboje.“ Tohle jistě bylo dobrodružství připomínající chlapce, který na *RAZZLE DAZZLE* s rozedranými plachtami křížoval na sanfranciském zálivu, který jako výrostek čtyřikrát zastavil rychlík *Overland Express*, který proplul Běloušovými peřejemi a v čínské džunce přeplul Žluté moře! „Je to nejnepínnavější dobrodružství, jaké jsem zažil!“ prohlásil.

Dělal si spoustu poznámek, fotografoval, na všech ostrovech sbíral kanoe domorodců, pádla, lastury, vyřezávané dřevěné figurky, šipy, láhve vydlabané z tykve, mísy, rohože, zástěry z kůry tapa, šperky, korále a domorodé okrasné předměty, takže si do Glen Ellen přivezl celé muzeum upomínek z Tichomoří. A všude, kam dorazil, na Fidži, na *Marquezách*, v souostroví *Samoa*, jak jen sehnal aspoň deset bělochů, hned jim začal přednášet o revoluci!

Všude byla posádka *SNARKU* obklopena malomocenstvím, elefantiázou, malárií, nakažlivými lišejí, kožní chorobou *gari-gari* (příšerně svědivou), Šalomounovou hnisavou vyrážkou, vředy a spoustou jiných nemocí zdomácnělých mezi divochy, takže se *SNARK* brzy proměnil v plovoucí nemocnici. Pokaždé, když se některý člen posádky na lodi pohmoždil nebo si rozřízl nohu při přistávání nebo na pěší výpravě v džungli, naskákala mu po celém těle hnisavá vyrážka a boláky se někdy rozrostly do velikosti dolaru. Na Šalomounových ostrovech dostala celá posádka malárii, která sklátila na lože pět členů a šestý musel samojediný řídit plavbu *SNARKU*, při pěkném a třeba i mizerném počasí. Jack měl tolikrát záchvat malárie, že se celé měsíce neudržel na nohou a musel zůstat na lůžku, omámen silnými dávkami chininu. Cestou k *Fidži* si do krve rozškrábal nohu poštipanou moskyty a po celém těle dostal hnisavou vyrážku.

Ale ani z takových útrap si nic nedělal, považoval je za romantické útrapy neohroženého a nezdolného badatele, který dobývá svět. Rád si říkal doktor samouk, trhal zuby, Charmianě a Martinu Johnsonovi létal otevřené boláky leptavým roztokem sublimátu, nutil Wadu polykat chinin, protože Wada se nakazil tropickou zimnicí a s fatalismem Orientálce se už chystal na smrt.

Pokud Jack neležel, schvácen záchvatem malárie, nikdy se nezpronevěřil svému úkolu napsat za dopoledne tisíc slov. Stejně svědomitě plnila své povinnosti Charmian a ještě opisovala na stroji Jackovy rukopisy a stenografovala podle Jackova diktátu odpovědi na velmi obsáhlou korespondenci. Děj Jackova jediného románu z Tichomoří s názvem „Dobrodružství“, který mu dal kolik měsíců pilné práce, se odehrává na kokosovníkových plantážích na Šalomounových ostrovech, kde Jack pobyl delší čas. Když mu kritika vytýkala jeho výraz „rozvřeštěná divočina“, hájil se tvrzením, že věrně vyličil jen to, čeho byl očitým svědkem. Jenže přesná reportáž ještě není opravdová literatura: „Dobrodružství“ je docela slušná úniková četba, ale nikterak nevyniká nad průměr tehdejší tuctové literatury stejného žánru. Tento román vycházel na pokračování v časopise POPULAR MAGAZINE pro čtenáře s malým literárním vzděláním, a když byl vydán knižně, velmi rychle se na něj zapomnělo.

Jackovy články z plavby kolem světa, které později vyšly pohromadě v knize „Plavba na SNARKU“, jsou bystré a smělé reportáže, psané živým, kamarádsky upřímným a poutavým vypravěčským slohem, tak příznačným pro Jackovu povahu, ale Jack by je jistě nikdy neprohlásil za literárně hodnotné dílo. Na palubě SNARKU a pak ještě v příštích letech napsal celkem třicet povídek s dějem z jižního Tichomoří a některé z nich, jako například „Mapuhi a jeho dům“, „Pohan“, „Koolau“, „Malomocný“, „Chun ah Chun“ a „Yah! Yah! Yah!“, jsou vyprávěny tak živě, že užaslému čtenáři je, jako by měl před očima výjevy ze života domorodců. Povídky o „nepřemožitelném bělochovi“, který krotí černochoy a podmaňuje si svět, jsou napínavé a exotické, ale nepůsobí dost přesvědčivě. Čtenář se málokdy může vžít do postavy hlavního hrdiny, tak aby s ním bojoval i umíral, jako se dovede vžívat do Jackových hrdinů z aljašských povídek, kteří jsou vždy rození Američané. Povídky z Tichomoří jsou dobrodružné, ale jejich dobrodružnost čtenáře nestrhne.

Soudruzi socialisté Jackovi zazlívají, že odjel do světa, když doma bylo tolik práce. V hlubším smyslu měli pravdu: Jack v prostých povídkách o svých krajanech, o jejich obyčejích a konfliktech vytvořil skutečná literární díla, která nám zůstávají živě v paměti, rozšiřují náš duševní obzor a obohacují nás literárními zážitky.

Plavba na SNARKU se Jackovi vyplatila, pokud šlo o dobrodružné příhody, ačkoli z ní literárně nevytěžil taková díla, která by mu přinesla velký zisk — ale o tuhle stránku věci se Jack nikdy moc nestaral. Rád prohlašoval: „Mně vždycky šlo o to, abych nadšeně užíval života — tohle je pro mne důležitější než umění a ostatní zájmy.“

Nejenže si ukládal přísnou pracovní kázeň, ale snažil se také ze všech sil uspořádat si své finanční záležitosti. Hodlal nechat poblíž najaté vilky Wake Robin postavit několik domků pro hosty, které si chtěl po návratu domů pozvat, a tak napsal Ninettě Eamesové dopis na devět stránek, jenž obsahoval spoustu přesných stavebních pokynů. Tisíce mil daleko, na Šalomounových ostrovech, si dopodrobna předpisoval, zda se mají otvírat dveře dovnitř nebo ven a jak daleko od klozetu má v koupelně být umístěno umyvadlo. Psal podivuhodně jasné, logické a obsažné dopisy těm, s nimiž byl v obchodních stycích, ale čím jasnější dával pokyny, tím byly jeho obchodní záležitosti chaotičtější: dosud si neuvědomil, že ten, kdo vydělává dvacet až třicet tisíc ročně, je jako člověk, který má na starosti velký podnik, a musí se držet v jeho blízkosti. Například newyorský agent prodal Jackovu povídku anglickému časopisu a Ninetta Eamesová vyjednala uveřejnění téže povídky v americkém časopise — Jack zatím utratil honorář z amerického časopisu, který ho najednou dopáleně žádal o náhradu, protože ho Jack prý ošidil o provizi z autorského honoráře od anglického časopisu. Americká a anglická nakladatelství, která vydávala Jackovy knihy, se hádala, kterým z nich náleží právo prodávat jeho knihy v koloniích, a tím se vydání knihy často zdrželo; redakce časopisů například chtěly uveřejnit Jackovy povídky a články, kdyby mohly být některé pasáže pozměněny, ale nakonec rukopisy vracely, protože písemné vyjednávání s Jackem, který byl na Šalomounových ostrovech, trvalo na takovou dálku řadu měsíců. Jackova díla na literárním trhu stoupla v ceně, za rukopis povídky od časopisů jako COSMOPOLITAN a COLLIER'S dostával pět až šest set dolarů, takže Ninetta Eamesová se o jeho povídky

a články začala handrkovat jako na dražbě — „kolik dáte za Londonovu povídku?“ — ale nakonec ji prodala za jakoukoli nabídnutou cenu. Redakce brzy vytušily, že se Londonovy literární práce nabízejí z nutnosti, aby se honem prodaly, a přestaly se o ně zajímat, protože trh jimi byl přesycen — a Jackovi náhle vyschly příjmy.

Stovky strojem popsaných stránek, které Ninetta Eamesová tehdy zbrkle posílala Jackovi, jsou úctyhodný dokumentární materiál, jenž vzbuzuje úžas. Mentalitou i stylem živě připomínají stovky strojem popsaných stránek, jež Jack před pěti lety dostával od neteře Ninetty Eamesové. Jsou to roztěkaná, květnatá, přeslazená vyznání oddané a obětavé lásky, která sahá až za hrob, ale mezi řádky se z nich dá vyčíst ocelová vůle. Ninetta Eamesová dala stavebně rozšířit vilku Wake Robin a po Jackově návratu do Glen Ellen chtěla, aby jí platil činži ze zvětšené vilky, ačkoli ji představěla za jeho peníze. Ještě jednou si zvýšila plat, tentokrát na třicet dolarů měsíčně, dokonce se zpětnou platností, a ptala se Jacka, jestli jí konečně hodlá platit dost, aby z toho mohla být živa. Jack jí odpověděl: „Od té doby, co mám peníze na utrácení, vždycky se starám, aby každý, kdo pro mne něco udělá, dostal za to dobře zapláceno. Mohu na to být hrdý.“ Když pořád naříkala, jak je chudá, jak se musí uskrovnovat, a proto nemůže Jackovi splatit peníze, které jí před výpravou na SNARKU půjčil, Jack jí nakonec odepsal: „Oaklandská banka mi neplatí žádné úroky z peněz, které mám na běžném účtu, tak si z nich vyberte, kolik potřebujete.“ Když si dnes prohlížíme Jackovy šekové knížky, vidíme, že ho Ninetta Eamesová vzala za slovo: jsou tam stovky šeků na částky vyplacené sanatoriím, lékařům a za léky, za parádu, nábytek, opravy vilky Wake Robin a na úhradu tak nehorázných účtů z potravinářských obchodů, že by za tolik peněz bylo možno uživit celý velký ústav.

O tomhle všem Jack možná nevěděl, ale zřejmě k tomu dal v zásadě svolení. Určitě však netušil, že z peněz, které vydává na ranč, vrací se mu za jeden dolar nanejvýš tak pětadvacet centů. Objednal a zaplatil solidní kamennou přístavbu k bývalé stodole, ale když Glen Ellen stihlo po několika letech zemětřesení, zdi popukaly a Jack zjistil, že v nich zedníci nechali dutiny a naházeli do nich plechovky od konzerv a zbytky od jídla. Objednal si také zařízení do koupelny v šafářově bytě, za něž zaplatil plnou cenu, ale

ukázalo se, že zařízení bylo opotřebované už tehdy, když přišlo nákladním vlakem na stanici Glen Ellen. Avšak nejhorší ránu paní Eamesová Jackovi zasadila tím, že mu přestala posílat měsíční vyúčtování. Napsal jí zoufalý dopis z Penduffrynu, v němž se pokouší urovnat s ní různé složité obchodní záležitosti a stěžuje si, že ačkoli v roce 1908 od ní každý měsíc dostává poštu, poslala mu zatím vyúčtování jen za únor a květen.

A najednou se uprostřed toho chaosu Ninettě Eamesové podařilo uzavřít skvělý obchod a Jack jí všechno odpustil. Prodala časopisu *PACIFIC MONTHLY* autorské právo na vydávání románu „Martin Eden“ na pokračování za královský honorář sedmi tisíc dolarů, který Jackovi stačil na zaplacení všech dluhů a ještě mu pár tisíc zbylo.

S Hillovým rančem v Sonomě sousedily Kohlerovy vinice v rozloze osmi set akrů a Lamottův ranč v rozloze sto deset akrů. Ninetta Eamesová už mnoho měsíců Jackovi připomínala, že Kohlerův pozemek je velmi levně na prodej, za třicet tisíc dolarů, a několikrát mu už psala, že by mohl Lamottův ranč koupit za deset tisíc dolarů. Jack nepotřeboval žádné z těch pozemků, měl už sto třicet akrů skvělé půdy, na níž dosud nestrávil ani celých čtyřicet hodin; hodlal se ještě pět let plavit kolem světa a věděl, že sedm tisíc dolarů, které dostal za „Martina Edena“, ho zachránilo před bankrotem. Ale rozpomínal se na Lamottův ranč, na zvlněnou pahorkatou krajinu se santálovými lesy, kde se celé hodiny blaženě projížděl na koni hlubokými údolními a stezkami mezi vinicemi a madronovými háji. A obratem pošty dal paní Eamesové příkaz, aby Lamottův ranč koupila. Zaplatila za něj na hotovosti tři tisíce dolarů a zbytek kupní ceny dala vložit na ranč jako hypotéku. Jack se plavil na dvoustěžňové plachetnici mezi Šalomounskými ostrovy k Japonsku, Indii a Suezskému průplavu, nevěděl, zda se mu podaří prodat povídku, kterou nazítří napíše, a zda mu bude možno zaplatit účty za příští měsíc, ale přesto už vlastnil dvě stě čtyřicet akrů krásných pozemků na úpatí kalifornských kopců ...

18. září 1908 si musel přestat hrát na lékaře samouka: ruce měl zpuchlé podkožní vodou, ani je nemohl sevřít v pěsti, leda jen s velkým úsilím a s bolestmi. Pak se mu začala kůže loupát, nejdříve jedna vrstva, potom druhá, až nakonec pátá a šestá. Neustále zakoušel muka. Nikdo nedovedl zjistit, jakou to má podivnou nemoc. V celém

těle měl trýznivé bolesti, často se ani neudržel na nohou, a když se potácel po palubě, pořád se bál, že se bude muset rukama něčeho chytit. Nervová porucha ho začala skličovat i duševně, znovu ho začal soužit stihomam — představoval si, že se lidé spiklí, aby mu znemožnili obeplout svět.

Nenechal se odstrašit nebezpečím ani strážnými, výlohy a posměch ho jen dráždily, aby stůj co stůj uskutečnil své předsevzetí. Ale nakonec ho přemohla nemoc. Zdolán bolestmi uzavřel smlouvu s jedním kapitánem ve výslužbě, aby se mu staral o SNARK, a zamluvil si jízdenky pro sebe, Charmian, Martina Johnsona a Nakatu na lodi s. s. NAKOMBA, která měla odplout do Sydney.

Poslední večer před vyplutím si samotný zašel na SNARK. Měsíc ozařoval palubu lodi, kterou si Jack sám navrhl a dal postavit. Miloval každou její částičku, i její slabiny a vady, protože i ty byly jeho dílem. Utopil v ní spoustu peněz, vyplýval na ni spoustu energie, ale stála mu za to, i za všechny výsměch, jež musel kvůli ní snášet. Někdy bývala toulavá a svévolná, jindy zase slabá a bezmocná, ale sloužila mu dobře, byla mu věrná, spolehlivě ho přenesla přes tisíce mil oceánu, kam si přál, poskytla mu blažené chvíle a hrdinská dobrodružství a dala mu možnost poznat mnoho exotických krajů, aby se v suchopárnějších a nudnějších dobách měl ve vzpomínkách čím kochat. Neohroženě spolu vzdorovali smrti, probili se rozbouřeným mořem, bičoval je víchř a déšť, nehybně stáli v bezvětrí, spolu se hřáli v prudké sluneční záři a rozjařovali slaným mořským vzduchem. Ta loď mu byla dobrou družkou — na rozloučenou hladil rozbolavělou rukou její palubní zábradlí, plachtoví i strojní součástky, dokonce v upřímném, sentimentálním rozcítlivění uronil pár slz, jak se to patří vždycky, když se loučí věrní přátelé.

Po dvanácti dnech trýznivé plavby šel si v Sydney lehnout do nemocnice a zůstal tam pět neděl. Australští odborníci si s jeho nemocí nevěděli rady, protože v dějinách lékařství asi nebyla vůbec zaznamenána. „Jsem bezmocný jako malé dítě. Někdy mám ruce tak opuchlé, že jsou dvojnásobně velké, a odumřelá pokožka se mi na nich loupá současně až v sedmi vrstvách. Na prstech nohou mi ve čtyřicetihodinových narostou nehty tak tlusté, jak jsou dlouhé.“

Když se Jack přesvědčil, že mu v nemocnici nedovedou pomoci, zdržel se v Sydney ještě pět měsíců v hotelech

a najatých soukromých bytech, a stále doufal, že se nalezne nějaká léčba a on se zas vrátí na SNARK. Nebyl schopen psát a měl takové bolesti, že nemohl ani číst. Jediná jeho výdělečná práce za tu dobu byl článek o zápasu Burnse a Johnsona v Austrálii. Jeho věčný úsměv, o němž před rokem tak okouzleně psal reportér v sanfranciských novinách, byl navždy tentam. Jack byl pořád mladík, ale nemocný, rozčarovaný a znechucený.

Počátkem března roku 1909 už věděl, že nevrátí-li se domů do Kalifornie, budou jeho kosti tlít v tropech. Martina Johnsona s lodivodem poslal na Šalomounovy ostrovy, aby odtamtud SNARK dopravili do Sydney. „Nechal jsem SNARK na starost kapitánu pijákovi, a když připlul do Sydney, nezbylo na něm skoro nic. Doposud nechápu, kam se poděly mé automatické pušky, lodní zásoby, lovecké střelné zbraně, dva fotografické aparáty a tři tisíce francouzských franků.“ Dal si ze SNARKU vynést jen své svršky a pak ho prodal v dražbě. Dostal za něj tři tisíce dolarů a SNARK potom sloužil jako dopravní loď pro domorodce, schované na Šalomounových ostrovech pro otrockou práci na plantážích — loď, kterou si vystavěl jeden z nejznámějších socialistů na světě! Ironie osudu!

Po více než dvouletém putování připlul Jack 23. července 1909 do San Franciska a v přístavě řekl novinářům: „Jsem nevýslovně unaven a přijel jsem si domů řádně odpočinout.“ Byl příšerně zadlužen, zdraví měl zle podlomené, noviny doma se o něho nezajímaly, nebo o něm psaly nevlídně, redaktori časopisů od něho za minulý rok dostali pramálo opravdu dobrých literárních příspěvků a začínali ho podezírat, že je se svým psaním v koncích; ani čtenářům se už nelíbily jeho poslední články a povídky, které, jak se jim zdálo, jen potvrzovaly posměšný výrok, že Jack London má na začátku povídky tři osoby a nakonec čtyři z nich zabije. Špatně řídil svou loď, takže ztroskotala na korálovém útesu a v prudkém vlnobití se pozvolna rozpadávala v trosky.

IX

Ze Sydney se Jack plavil pohodlně, s delšími zastávkami v Jižní Americe a v Panamském průplavu, a zdravotní stav se mu zlepšil, takže se doma v mírném kalifornském podnebí brzy uzdravil. A když se mu potom náhodou dostala do ruky kniha „Účinky tropického slunce na bělochy“, z níž se dověděl, že jeho záhadná nemoc nebylo nic horšího než podráždění pokožky ultrafialovými paprsky tropického slunečního záření, vzpomatoval se i duševně. V srpnu si už mohl zaplavat v tůni na potoce nad hrází, kterou dal postavit, na svém Washoe Banu se projížděl po rančích koupených od Hilla a Lamotta a mohl se dosyta nadýchat léčivých vůní pelyňku a borovic, které se šířily nad horkou vyprahlou půdou.

Se stavbou domků pro hosty u vilky Wake Robin, o níž ze Šalomounových ostrovů psal paní Eamesové, se ještě ani nazačalo, nastěhoval se tedy do zvětšené vilky, přestavěné v době jeho nepřítomnosti. Nebyl z těch, kdo nedovedou odpustit minulé křivdy, proto se s Ninettou Eamesovou uznale a čestně vyrovnal: koupil jí malý Fishův ranč o sedmnácti akrech, aby měla pastvu pro krávu, a když se rozvedla s Roscoem Eamesem a provdala se za Edwarda Payna, dal jí jako svatební dar výbavu a ještě pět set dolarů.

K obsluze měl inteligentního Nakatu, který také vařil, a Charmian se starala, aby ho nikdo nevyrušoval, a tak se mohl doopravdy a vážně pustit do urovnání svých záležitostí. Především si z nakladatelství a časopisů vyžádal zpět všechny své rukopisy, napsal jim, že přijel domů natrvalo, že má hodně skvělého nového materiálu a že už nebude docházet ke zmatkům v zadávání jeho autorských práv. Tři měsíce nevyšla v žádném časopise ani řádka z pera Jacka Londona — od počátku století, kdy vydal „Odyseji Severu“, prvně si američtí čtenáři nemohli od něho přečíst něco nového. Ty tři měsíce věnoval hrdinskému úsilí, soustředěně pracoval každíčký den v týdnu devatenáct hodin denně, právě tolik, kolik si ukládal v době, kdy začínal psát: věděl, že získat si přízeň čtenářů podruhé je mnohem těžší než napoprvé. Redaktoři a kritikové se netajili domněnkou, že Jack je v koncích, že už „spotřeboval municí“,

že čtenáře už omrzel — ale on věděl, že teprve vlastně začal zásobu krásných a poutavých příběhů, které může vypovědět.

Vyšel román „Martin Eden“, který si zasluhoval nejvzteklější přijetí ze všech jeho knih, ale nevládná kritika jej tak opomíjela, nebo dokonce odsuzovala, že Brett nemohl nikde nalézt ani pár pochvalných řádek, aby je mohl citovat v reklamě. Jack si stěžoval, že ho kritika nepochopila — vytýká mu, že hodil socialismus přes palubu a teď zase propaguje individualismus, kdežto on tu knihu napsal právě jako obžalobu Nietzscheova filosofického učení o nadčlověku. K věnování ve výtisku zaslaném Uptonu Sinclairovi připsal: „Jeden z motivů v ‚Martinu Edenovi‘ je právě útok na individualismus. Asi jsem to zbabral, když ani jeden kritik na to nepřišel.“ Ale nezbabral to: napsal úchvatný autobiografický román a jeho rozporné filosofické názory v něm zaujmají pouze druhořadé místo. Kdyby byl tušil, že se „Martinem Edenem“ bude inspirovat celá pozdější generace amerických spisovatelů, kdyby byl tušil, že za třicet let „Martin Eden“ nadchne tisíce milovníků beletrie jako nejsilnější americký román, nebylo by ho tolik rmoutilo, že kritika opomíjí jeho román, jež vždycky pokládal za svůj nejlepší.

Čím byl zadluženější, tím líp se mu pracovalo — čím větší měl nesnáze, tím vášnivěji útočil na své protivníky. Začal pracovat na směle koncipovaném románu „Bílý Den“ z prostředí Klondiku a San Franciska; napsal čtyři své nejlepší povídky z jižního Tichomoří, napsal „Samuela“ a „Hospodáře na moři“, dvě dojemná vyprávění v místním nářečí z pobřeží Irska. Hněv byl vždycky jeho nejmočnější pohnutkou, a tentokrát zuřil vztekem — měl zlost na sebe, že se marnotratností div nepřivedl na mizinu, i na pomluvy kritiků, že se vypotřeboval. Po vydání dvaceti knih už nezakoušel tak prudkou rozkoš z tvůrčí práce a jen pod tlakem vnějších okolností se mu dařilo plnit každodenní úkol. Přítích sedm let se ten tlak neustále stupňoval a nikdy nepovolil — člověk by Jacka málem podezíral, že se úmyslně pořád zadlužoval, aby se přinutil k práci. „Dru se s jedním románem, denně píše tisíc slov a nenechal bych toho, ledaže by se troubilo k Poslednímu soudu.“

Pracoval svědomitě a dobře, takže mu nejlepší zápasnickou povídku „Kus masa“ uveřejnil nejrozšířenější časopis SATURDAY EVENING POST a zároveň nabídl mu smlouvu na dalších dvanáct povídek pro příští rok. Když Jack dopsal román

„Bílý Den“, prodal jej newyorskému listu „Herald“, který si zároveň vymínil právo na zadání „Bílého Dne“ všem denním listům, pokud jej budou chtít vydávat na pokračování. „HERALD“ uveřejňoval reklamní články o Jacku Londoni a jeho novém románu, a ty pak byly otisknuty ve stovkách novin, které si zajistily právo na další vydání „Bílého Dne“ na pokračování. Taková reklama byla nejpádnejší odpovědí na pomluvy a posměch, jež musel Jack doposud snášet.

„Bílý Den“ je stejně významné dílo americké literatury jako „Železná pata“, „Martin Eden“, „Jack Ječmínek“, „Měsíční údolí“ a „Tulák po hvězdách“. První polovina románu, v níž Jack líčí Aljašku před nálezem zlata v Klondiku, kdy Bílý Den ještě vozil poštu ze Circle City do osady Dyea, je nejúchvatnější vyprávění z mrazivých končin severu a ve vylíčení krásné venkovské krajiny kolem Glen Ellen v poslední třetině románu Jack vyzpíval svou oddanou lásku k přírodě, k jejím krásám a záhadám; ale hlavní předností „Bílého Dne“ je především rušný a dobrodružný děj a způsob, jímž se v druhé třetině autorovi podařilo вплést do napínavého románu jako jeho hlavní motiv socialistické zásady, takže je čtenář přijímá, aniž to tuší, jako nezbytnou hlavní páku děje. Když Bílý Den svádí bitvy se sanfranciskými finančníckými piráty, uvažuje takto: „Jenom práce, poctivá práce je zdrojem všeho bohatství. To znamená, že ať už jde o pytel brambor, velké koncertní křídlo nebo osmisedadlový cestovní automobil, všechno vzniklo jenom pracovním výkonem. Ta podvodná společenská organizace přichází teprve do distribuce těchto věcí, když už je poctivá práce vytvořila. Desítky tisíc a statisíce lidí vysedávají celé noci a vymýšlejí úskoky, jak by se dostali mezi dělníky a věci, které dělník vyrobil. Tito úskoční lidé jsou obchodníci a podnikatelé. Ten kus jeho výrobku, jež si urvou pro sebe, není určován žádným zákonem rovnováhy, nýbrž holou jejich silou a sprostotou. Urvou vždycky všechno, co provoz snese.“*)

V roce 1910 to neprobuzené Americe jistě čpělo kacířstvím, bylo to opravdu proletářské smýšlení: a protože takové názory nejsou pouze naroubovány na děj, protože

*) Pasáž v uvozovkách je ocitována z překladu A. J. Šťastného, jehož překlad románu „Bílý Den“ vydala Mladá fronta v r. 1958. (Pozn. překl.)

nezbytně a samozřejmě vyplývají jako závěr ze zkušeností Bílého Dne, stávají se zároveň socialistickou propagandou i uměleckým prostředkem. Když vyšla „Železná pata“, kritika Jackovi vytýkala, že se tím románem zabil jako dobrý spisovatel a stal se jen průměrným propagandistou — ale Jack se hájil, že dovede spojit propagandu a umění tak nenápadně, aby čtenář vůbec nerozeznal, kde jedno končí a druhé začíná. V románu „Bílý Den“ se mu ten krajně nesnadný úkol podařil. Bílý Den svými činy vzrušoval milióny lidí a Jack si znovu získal přízeň čtenářů ze všech vrstev.

Když se přesvědčil, že nepozbyl žádné ze svých schopností, chtěl vypálit salvu z jedenadvaceti děl na počest Charmiany, která čekala děcko, a tak začal usilovat o splnění jiného svého velkého celoživotního snu. Začal pracovat na plánech domu, v němž hodlal žít nadosmrti a pro nějž si vybral nádherný pozemek v hlubokém údolí na Hillově ranči, obklopený santálovými lesy, vinicemi, ovocnými sady a manzanitovými háji. Chtěl tam mít knihovnu, do níž by se mu vešly čtyři tisíce knih, stohy bílých lepenkových krabic lístkové kartotéky, v nichž si shromažďoval i úřední zprávy, socialistické brožury, výstřižky z novin, dialektické výrazy a lidová rčení z různých končin Států, jména a záznamy o lidových obyčejích, kam by se mu vešly i jeho básně, které si doposud vázal do červených desek. Potřeboval tam také mít ocelové registratury naplněné obchodní i osobní korespondencí a třicetipatrové regály na černé bedničky, v nichž choval jako poklady své památky z putování „po trati“ a po Aljašce, z cest na Koreu a do jižního Tichomoří, stovky svých vtipných hlavolamů, her, skládanek, vodních pistolí, mincí se stejným ražením po obou stranách a balíčků všelijakých podivných karetních her. Chtěl tam mít hodně místa pro své hosty, aby se jim pohodlně bydlelo v pokojích opatřených vším moderním pohodlím, jako je elektrické světlo a tekoucí voda; v chladném suterénu chtěl mít hernu, přístupnou jen mužům, kde by se mohli usnášet na politických akcích, zabavovat vyprávěním příběhů, kde by si mohli zahrát kulečník, poker, kuželky, všelijak hlučně se povyrážet. Chtěl tam mít krásný hudební salón pro Charmianu a mnoho svých přátel, milovníků hudby; velikánskou jídelnu, kam by se kolem stolu vešlo padesát lidí při dobrém jídle a pěkném popovídání; chtěl tam pro sebe mít ložnici se stěnami obloženými santálovým dřevem, kam by se vešel

speciálně navržený noční stůl, tak aby na něm bylo dost místa pro všechno, co mu Nakata připravoval k ruce na noc, aby ho neměl tak přeplněn, že by si každou chvíli převrhl sklenici s vychlazeným nápojem na knihy. A chtěl tam konečně mít opravdovou pracovnu s diktafonem a dostatečným prostorem pro tajemníka.

Tvrdil, že se tím domem chce „zapsat do dějin“. Indiáni kdysi nazvali uzurpátora bělocha „Vlk“, a to slovo měl Jack stále na mysli: vždycky se považoval za Vlka-dobyvatele. Použil toho názvu v titulech svých knih, například „Syn vlků“ a „Mořský vlk“, v dopisech Georgu Sterlingovi se podpisoval Vlk, a tak si umínil, že svůj dům pojmenuje „Vlkův dům“ bílého pohlavára. Horoucně si přál, aby mu Charmian porodila syna, aby se mohl stát zakladatelem londonovské dynastie, která by provždy sídlila ve Vlkově domě. Umínil si, že to bude nejkrásnější a nejoriginálnější dům v Americe. Musí být vystavěn z obrovských kvádrů červeného pískovce, jehož je v Měsíčním údolí víc než veškeré vegetace dohromady, a na stavební dříví se musí pokácet santálové stromy staré deset tisíc let. Zval si architektky ze San Franciska a mnoho blažených hodin se s nimi radil nad plány domu, rozvrhoval umístění pokojů a navrhoval vnější úpravu domu tak, aby zapadala do pahorkaté krajiny. V Santa Rosa nalezl Itala, kamenického mistra jménem Forni, a tomu světil stavbu domu, který měl přetrvat staletí. Nařídil, aby každý kousek kamene z lomů byl omyt vodou a vydrhnut ocelovým kartáčem; na dům se mělo použít více cementu a méně vápna, aby zdi vydržely věčně; jeden zedník se měl starat jen o to, aby zdi byly ustavičně vlhké, aby cement neztvrdl moc rychle a nerozpadl se na prach; mezi patry musely být dvě, někdy i tři podlahy, vnitřní zdi musely být z tvrdého dřeva a vnější klády musely být zapaštěny do vnitřních trámů, aby stavba byla dvojnásob zajištěna; střešní okapy a žlaby i celé vnitřní vodní potrubí chtěl mít z mědi.

Jako nezkrotný individualista si chtěl vystavět nejskvělejší palác ve Spojených státech. Jako socialista chtěl dělníkům opatřit dobře placenou práci a svým hostům dát k dispozici polovinu z třiačtyřiceti pokojů v domě. Aby se stavba urychlovala, musel Forni najmout na práci třicet lidí.

Na jaře roku 1910 udělal Jack jednu z nejmoudřejších věcí v životě: pozval si sestru Elizu Shepardovou, aby se k němu natrvalo přistěhovala a dozorovala na hospodaření na

jeho rančích. Paní Shepardové už bylo třiačtyřicet let a nežila už se svým jedenasedmdesátiletým manželem; od té doby, co odešla z livermorského ranče Johna Londona, zakusila všelijaké strážné a duševní útrapy, ale pořád byla vlídná a laskavá. Nebyla hezká a měla prostě způsoby, ale byla poctivá, schopná a chytrá — pilně studovala práva, aby mohla manželovi pomáhat v jeho patentní kanceláři. Nepotrpěla si na parádu, na zbytečné řeči, ani na přetvářku, a tak ji měl rád každý, kdo s ní přišel do styku. Vždycky zůstala Jackovi věrná a milovala ho stejně oddaně jako svého vlastního syna Irvinga.

Jakmile Eliza přijela a ujala se správy rančů, ihned jí Jack přidal na starost Kohlerovy vinice, jejichž koupi mu tolikrát navrhovala Ninetta Eamesová v dobách, kdy se plavil na SNARKU: bylo to osm set akrů půdy v sousedství jeho tří rančů koupených od Hilla, Lamotta a Fishe. Kohlerovy vinice ho stály třicet tisíc dolarů, daleko víc, než měl na hotovosti, protože už začal se stavbou Vlkova domu a ta byla také rozpočtena na třicet tisíc dolarů. Co ho nutilo ke koupi ještě dalších osmi set akrů půdy, když na ně neměl peníze, když měl už tolik nádherných pozemků, na nichž se chtěl usadit a užívat života a které musel obhospodařovat? Třicet tisíc se mu zdálo málo za tak pěkný kus země, jímž mohl zaokrouhlit rozlohu svých dosavadních dvou velkých rančů, aby se stal pánem celého kraje kolem dokola, kam až mohl dohlédnout... Jack vždycky tvrdil, že lidské choutky nelze rozumově zdůvodnit. „Filosofie může do člověka měšic hučet, co má dělat, ale přijde chvíle, kdy si člověk řekne ‚Já chci!‘, a filosofie odtáhne s nepořízenou. Tohle ‚Já chci!‘ nutí pijáka pít a mučedníka nosit žíněnou košili — jednoho člověka nutí, aby se honil za slávou, druhého za zlatem a třetího, aby se modlil k Bohu.“ Jack zkrátka a dobře chtěl Kohlerovy vinice, a tak si je koupil.

V červnu roku 1910 znovu začal na východě zuřivě shánět peníze. Psal: „Potřebuji naléhavě peníze, protože musím zaplatit hotově deset tisíc dolarů za půdu, kterou chci koupit. Z milosti mi byla lhůta prodloužena do 26. června, ale jestli do té doby nezaplatím, přijdu nejen o půdu, ale i o zálohu, kterou jsem na ni zaplatil.“

Charmian se už chystala k porodu a odjela do Oaklandu. Jack si sehnal regiment nádeníků, aby vykáceli novou sjízdnou stezku, která by spojovala jeho ranče ze všech stran s pozemkem, na němž bude stát jeho dům — mělo

to být překvapení pro Charmian, až si ji přiveze zpátky na ranč s jejích synáčkem: byl přesvědčen, že se mu tentokrát určitě narodí syn. Mnoho příjemných hodin strávil sprádáním snů o slavné chvíli, kdy svého chlapce prvně posadí na poníka, a jak se s ním bude projíždět na koni bok po boku po jedenácti stech akrech, které jednou budou jeho panstvím.

19. června Charmian porodila holčičku, ale ta žila jen tři dny. Eliza se postarala o pohřeb. Zoufale nešťastný Jack se s rancem novin v podpaždí zatoulal do výčepu na rohu ulic Websterovy a Sedmé v přístavní čtvrti, kde býval kdysi jako doma. Majitel výčepu Muldowney mu vyčetl, že mu chce na zdích vylepit plakáty, pustil se s ním do rvačky, a hned se mu vrhli na pomoc tři jeho příživníci. Než se Jackovi podařilo utéct, ti čtyři ho zle ztloukli. Jack dal Muldowneyho zatknout, ale soudce rváče neodsoudil k trestu, protože šlo o rvačku opilců a ta nepatřila před soud. Když se „rvačka opilců“ projednávala před policejním soudem, reportéři to rozmázli v novinách po celých Státech a ostře zaútočili na Jacka, že se opíjí, když má ženu v nemocnici a právě mu zemřelo nedávno narozené dítě. Zlomyslní „přátelé“ mu psali, že soudce nechtěl rvačku rozsoudit, poněvadž mu patří pozemek, na němž je ten výčep, a rozzuřený Jack napsal soudci útočný dopis, jež v opisech rozeslal tiskovým koncernům: vylíčil v něm všechno, jak to vpravdě bylo, a skončil pohružkou: „Jednou si na vás někde zchladím žáhu, a to důkladně, v mezích zákona!“ Pak poslal do všech novin v oblasti sanfranciského zálivu „otevřený list“, v němž žádal o informace, zda se dá o jeho činnosti politické, soudní nebo v sociálních institucích dokázat úplatkářství soudci, kterému patří pozemek, na němž je vykičený výčep Muldowneyho. Nepravdivé články o „rvačce opilců“ byly už dost zlé, ale když v novinách vyšel Jackův dopis adresovaný soudci, čtenáři v celých Státech nad ním pohoršeně a posměšně kroutili hlavou. Jack se mohl jedině pomstít způsobem, jaký je vyhrazen spisovateli: zvětčil tu aféru v povídce „Prospěch z choulostivé situace“, v níž soudci dal co proto ... a pak povídku prodal za sedm set padesát dolarů listu Post.

Za několik dní s napuchlým a do fialova podlitým okem odjel do Rena, kde deset dní psal pro newyorský list HERALD reportáže z tréninkového tábora boxerů a o zápasech mezi Johnsonem a Jeffriesem. Boxerské zápasy měl rád a deset

dní v tréninkovém táboře mezi ostatními zpravodaji, z nichž většinu znal z jiných reportérských výprav, dalo mu trochu zapomenout na trpkost a zármutek, že nemá syna. Tušil, že ho už nikdy nebude mít, že zemře bez dědice svého jména, a budilo to v něm pocit marnosti všeho snažení a neplodnosti, ačkoli zplodil už čtyřiadvacet knih.

Po návratu do Oaklandu vydal nedávno získané peníze za plachetnici ROAMER, už čtvrtou, kterou si pořídil. Jakmile se Charmian po porodu zotavila, vypluli spolu na záliv a Jack na lodi trochu pracoval, ale hlavně plachtil a lovil ryby k večeři. Když se vrátil do Glen Ellen, sousedé ho pozvali, aby jim udělal přednášku v tamější Chauvetově síni — mysleli, že uslyší romantické příběhy z jižního Tichomoří. Jack odmítl mluvit na pódiu, a tak mu předseda přinesl ze sousedního kupeckého krámu bednu od mýdla, aby na něho obecnost viděla. Ale farmáři z Glen Ellen neuslyšeli ani slovo o jeho příhodách na Tahiti, Fidži, ani Samojském souostroví — museli místo toho poslouchat hodinu, jak se jim Jack pokouší dokázat správnost zásady Eugena V. Debse, že „v třídním boji neznáme hodného kapitalistu a zlého dělníka: každý kapitalista je náš nepřítel a každý dělník je náš přítel.“

Letní měsíce strávené na vodě zhojily rány utrpěné ztrátou děcka a oaklandskou aférou. Jackovým největším potěšením bylo zajíždět na koni Washoe Banu a s oblíbeným psem Vlkem přes pole a louky na staveniště Vlkova domu, sledovat, jak stavba pokračuje, a pohovořit s Fornim a dělníky, s radostí pozorovat, jak si dělníci ten dům zamilovali stejně jako on a jak jej pokládají za velké umělecké dílo, které pomáhají spolutvořit. Bydleli ve stanech na ranči, po práci si vylezli na nejvyšší pahorek se džbánem vína a s tahací harmonikou a pod teplou, jakoby blízkou hvězdnatou oblohou zpívali sentimentální italské písně. Když bylo večer jasno, Jack si často chodil s nimi zazpívat, vypít skleničku natrpklého červeného vína a pohovořit o stavebních problémech, které se toho dne naskytly. Forni vzpomíná: „Jakživ jsem nepoznal tak hodného člověka, jako byl Jack. Byl hodný na každého a nikdy jsem ho neviděl na staveništi, aby se neusmíval. Byl dobrý demokrat a ušlechtilý člověk, miloval svou rodinu a dělníky měl rád. Za ty čtyři roky jsem od něho nikdy neslyšel, že pracujeme špatně nebo moc pomalu.“ Když se dělníkům už chtělo spát, Jack si s každým z nich podal ruku, popřál jim dobrou noc

a pak se psem Vlkem odcházel ovocným sadem, kde s rozkoší vdechoval vůni švestek a listů a zvlhlé úrodné prsti.

Charmian miloval upřímně a opravdově. Jezdili spolu a s Nakatou v lehkém kočárku taženém čtyřmi bujnými koni do divokých končin v Severní Kalifornii, v Oregonu a ve státě Washington. Charmian se vždycky nadchla pro každé dobrodružství, jezdila s Jackem na koni, plavala s ním a plachtila na zálivu, hrála mu na klavír a zpívala, přepisovala na stroji jeho rukopisy a stenograficky si zaznamenávala jeho diktované dopisy. Jack také udržoval přátelské styky s Bessie, několikrát za měsíc jezdil k ní a k dětem na návštěvu do piedmontského domu, hrál si s nimi a bral je s sebou do divadla nebo do cirkusu. Bessie řekla novinářům: „Pan London se o své dvě dcerušky stará velmi dobře. Má je velice rád. Když je v Oaklandu, často se přijede na ně podívat a hodiny si s nimi hraje a povídá. Děti svého otce milují, a mají také proč. Já jsem vůči němu nezatrpkla. Tím, že je na své děti tak hodný, dělá i pro mne daleko víc, než vůbec tuší.“ Bessie Maddernová měla vždycky v povaze tragicky ušlechtilý rys.

Flora stárla a byla čím dál tím potrhlejší, ještě víc, než v dobách svého manželství s Johnem Londonem. Přestože jí Jack koupil dům, v němž bydlela s tetou Jenny, která se o ni starala, a přestože Floře až do smrti posílal každý měsíc šek na pětapadesát dolarů, chodila si k sousedům v Oaklandu stěžovat, že ji Jack nechce podporovat, že nemá peníze na živobytí, a nabízela jim, aby si od ní kupovali chléb, že si chce zařídit pekárnu. Sousedé měli upřímný soucit se stárnoucí matkou, k níž se bohatý a slavný syn chová tak nevděčně a tvrdě, a ochotně jí slibovali, že si každý od ní denně bude kupovat bochník po domácímu pečeného chleba. A tak si Flora koupila pec a pustila se do pečení chleba. Zpráva o tom se ústním podáním rychle rozšířila po celém Oaklandu a lidé se zděsili. Jack si nevěděl rady, co si s matkou počít, a napsal jí nesmírně trpělivý, až dojemně šetrný dopis: „Drahá maminko, dovol, abych Ti spočítal, kolik Ti vynáší pečení chleba, a doufám, že se mi podaří Ti to rozmluvit. Doposud sis vydělala nanejvýš sedm a půl dolarů za měsíc. Pec Tě stála 26 dolarů. Kdybys čistý výdělek po sedmi a půl dolarech měsíčně znásobila třemi a odečetla od toho, kolik Tě stála pec, uvědomila by sis, že jsi tři měsíce pracovala úplně bez výděлку. A protože už nejsi schopna ani konat práci v domácnosti, budeš si

muset někoho najmout, kdo bude péci chléb místo Tebe, a budeš mu platit nejméně sedm a půl dolarů měsíčně, které na chlebě utržíš..." Znal dobře svou matku a věděl, že by nic nepomohlo vytýkat jí, že mu v Oaklandu kazí pověst — věděl, že jí to rozmluví, jedině když zapůsobí na její „smysl pro obchod“, jímž se tak ráda vychloubá.

Dopis zaučinkoval a Flora pečení zanechala. Ale potřebovala nějaké zaměstnání, aby mohla vybít svou nezkrtnou podnikavost, a tak si chtěla na Broadway zřídit stánek s prodejem novin. To jí Jack ještě včas zmařil. Brzy ho na ranči začali navštěvovat soudní exekutoři s účty za nejrůznější věci, které Flora nakoupila, ačkoli je vůbec nepotřebovala, a hlavně Jacka dopálilo, když mu exekutor předložil účet na šest set dolarů za brilianty. Jack byl na ni vždycky hodný, každou svou vydanou knihu jí ihned posílal s věnováním od milujícího syna, nikdy jí nedal najevo, že mu svým výstředním chováním škodí, ale věčně ho soužil strach, jaký nový nápad se jí zase líhne za těmi brýlemi v ocelových obroučkách na krátkozrakých očích. Časem se začal zabývat hrůznou domněnkou, že jeho matka nikdy nebyla duševně zcela zdráva. Ale lidská povaha je prozřetle složitá: Johnny Miller na Floru vzpomíná jako na nejlepší ženu, jakou v životě poznal, která mu vždycky byla hodnou, laskavou a úplně rozumnou matkou a přítelkyní; i ti, kdo se u ní tehdy učili hrát na klavír, na ni vzpomínají jako na roztočilou a hodnou starou dámu.

List *Post* Jackovi platil sedm set padesát dolarů za každou povídku, kterou mu uveřejnil, časopis *COLLIER'S* mu nabízel tisíc dolarů, list *HERALD* mu za krátkou vánoční povídku nabídl sedm set padesát dolarů a časopis *COSMOPOLITAN* s ním uzavřel smlouvu na sérii povídek, jejichž hlavní postavou měl být Smoke Bellew, u čtenářů velmi oblíbený. Nakladatelství Macmillan vydalo knížku Jackových povídek s názvem „Ztracená tvář“, knihu statí s titulem „Revoluce“ a román „Bílý Den“. Kniha „Ztracená tvář“ byla kritikou po zásluze přijata vřele, protože povídky „Ztracená tvář“, „Důvěra“, „Ten náš Flíček“ a „Zmizení Markuse O'Briana“ jsou zdařilé humoristické příběhy z aljašského prostředí a povídky „Zlatá horečka“ a „Rozdělat oheň“ jsou plné dramatického napětí. Jack jako povídkář nedosáhl tak vysoké úrovně od té doby, co napsal povídky vydané v knížkách „Syn vlků“ a „Bůh jeho otců“. Knihu „Revoluce“, sbírku dost nesourodých statí nestejné úrovně, přijala kritika

lhostejně, ale román „Bílý Den“ podle všeobecného očekávání nadšeně.

Vynaložením úsilí, vytrvalé a soustředěné energie a hlavně ovšem vrozeným nadáním vykonal Jack divy, jakých jsou schopni jen obři: ani ne za rok se z děsivé propasti smrti a zániku náhle povznescel do takových výšin jako doposud žádný americký spisovatel.

Měl už dost prozatímního ubytování ve Wake Robin, které mu nevyhovovalo, viděl, že Vlkův dům bude dostavěn až někdy za dva roky, a tak v červnu roku 1911 udělal něco, čím si připravil nejšťastnější a nejplodnější leta svého života: koupil desetiakrový pozemek uprostřed Kohlerových vinic, na němž stálo několik hospodářských stavení, lisovna vína a obytný dům. Najal si zedníky a tesaře a dal si přistavět rozlehlou jídelnu s velikým krbem a širokou krytou verandou, pak nechal zvětšit kuchyň a opravit ložnice s verandami, na nichž se mohlo spát. Z jednoho pokoje si zřídil pracovnu, kde kolem stěn dal postavit police na knihy, papíry a krabice s lístkovou kartotékou. Z malé verandy s výplněmi z hustých drátěných sítí místo skleněných tabulí, kde v noci spal, měl vyhlídku na obezděnou tropickou zahradu před domem, ze zadní široké verandy před jídelnou byla vyhlídka do prostorného dvora s velikou stodolou, kterou dal přestavět a zařídil v ní devět pohodlných hostinských pokojů pro své přátele. Správcem toho všeho udělal Nakatu a dal mu k ruce ještě dva Japonce k vaření a úklidu.

V domě na ranči byl od počátku jako doma, líbilo se mu tam a zval si k sobě zábavnou společnost. Už ve Wake Robin mívával u sebe tolik přátel a známých, kolik jich mohl uložit na kdejakém volném lůžku v chatách a stanech: George Sterlinga, Cloudesleyho Johnse, Jamese Hoppera, soudruhy socialisty a anarchisty, novináře, námořníky, trampy a jiné kamarády, které by bylo těžko zařadit do některé z těch kategorií. Jakmile si zařídil nový dům, začal si zvat známé i z širšího okruhu, takže to u něho každodenně vypadalo jako před lety na středečních přátelských večírcích. Snad každý, kdo patřil k uměleckým kruhům, nebo k některému svobodnému povolání, a kdejaký intelektuál, když přijel na západ, pobyl několik dní v „domě na Krásném ranči“, jak říkal Jack svému novému domovu. Posílal z ranče desítky tisíc dopisů, z velké části i lidem, kteří se s ním znesvářili, kteří ho napadali nebo pomlouvali, ale každý dopis zakončil pozváním: „Dveře mého domu na

Krásném ranči se zavírají na závoru zvenčí a vždycky je tu dost houní a jídla pro přátele a známé. Přijďte k nám a zůstaňte tu, jak dlouho Vám bude libo.“ Přijíždělo tolik lidí, že si dal natisknout návody, jak se lze dostat do Glen Ellen ze San Franciska a z Oaklandu. Kolem rozkládacího jídelního stolu obvykle bývalo nejméně deset hostů, často jich bylo dvacet i víc. Jednou si pozval na večeři Hyhara Dyalla, zakladatele indického dyallistického hnutí proti Angličanům, amerického spisovatele, profesora matematiky ze Stanfordovy university, farmáře ze sousedství, inženýra, Luthera Burbanka, námořníka, který se nedávno vrátil z Penangu, princeznu Ulu Humphreyovou, herečku a bývalou příslušnici sultánova harému, tři trampy a blázna, který si chtěl postavit dům od San Franciska až do New Yorku. Prostě lidi nejrůznějších povolání a z nejrůznějších končin, a mnozí leckdy žasli, s kým se to octli pohromadě. Někteří „geniální“ Jackovi přátelé neměli vůbec nic na práci, zůstávali u něho třeba měsíce, a protože je musel často vychovávat i k čistotnosti, dal pro ně Jack postavit domek v lese, ale všichni jedli u společného stolu v prostorné kamenné jídelně. Příštích pět let u sebe hostil spisovatele, malíře, politiky, evropské státníky a filosofy, duchovní, propuštěné trestance, průmyslové a obchodní magnáty, inženýry, ženy svých přátel, tisíce lidí. Cestování ho omrzelo, a tak si zval lidi k sobě. U každého vlaku čekal před nádražím v Glen Ellen kočár z Krásného ranče, aby hosty odvezl po klikaté prašné cestě, po níž se svázely náklady vinných hroznů.

Jack měl hosty rád a pyšnil se svou pohostinností. Jako starozákonní patriarcha nebo venkovský velmož častoval přátele a známé hojným jídlem a těšilo ho, že jim chutná, dával jim k dispozici koně na vyjížďky do kopců a vždycky měl pro ně dost místa, aby se u něho mohli vyspat. Ale nejraději své hosty zkoumal, co v nich je, a shromažďoval si poznatky o jejich povahách a mentalitě, o jejich slabých stránkách, jejich různých nářečích a životních osudech. Své hosty (jak vyplývá ze sterých svědectví) udivoval a bavil bystrým, jasným a přesným myšlením, důkladností a rozsahem vědomostí a tím, jak obratně dovedl od odborníků světového jména získávat jejich znalosti a jak rychle si je osvojoval. Ale i když měl host jen docela nepatrnou zásobu vědomostí, Jack se snažil ten zdroj informací vyčerpát, než host zase odjede. S každým rozmlouval o jeho oboru,

dovedl se chytře vyptávat, ohnivé diskutovat o zásadních pojmech, třbil si názory a někdy i přetrumfl v diskusi svého protivníka, třebaže diskutovali o nějaké otázce z jeho speciálního oboru. Liboval si v břitkých slovních soubojích a často říkal naschvál: „Já zastávám opačný názor!“

Měl intelektuální zvědavost opravdu vzdělaného člověka; nashromáždil si pěknou sbírku knih o socialismu, brožur, referátů, článků z amerických časopisů a novin; kolem dokola své pracovny měl až ke stropu regály plné knih, které si neustále objednával z New Yorku a z Anglie. „Já nikdy nebudu mít dost knih, potřebuji literaturu z každého oboru. Snad je nikdy všechny nepřečtu, ale chci je mít, protože nikdy nevím, do jakých neznámých končin světa se třeba pustím na výzkumnou plavbu.“ Odborníci na slovo vzatí svorně tvrdili, že se nikdy nesetkali s tak bystrým a inteligentním člověkem, jako je Jack London — nejlepší uznání, jakého se mohlo dostat chlapci, který si ve třinácti letech musel vydělávat práci v konzervárně, protože si nemohl opatřit vyšší vzdělání.

Alexander Irvine praví, že Jack mluvil tiše, příjemně lahodným hlasem jako jemná žena. Vždycky byl na každého zdvořilý, i na ty, kdo ho dráždili svou bigotností, nevědomostí nebo hloupostí — i s takovými vlastnostmi se někdy setkával u svých hostů, protože si zval i spousty úplně cizích lidí. Muži a ženy, jejichž filosofickými názory opovrhoval, které pokládal za nepřátele civilizace, i ti k němu jezdili na ranč, spali v jeho postelích, jezdili na jeho koních a jedli u jeho stolu, a nikdy jim nedal pocítit, jak o nich smýšlí, byť u něho zůstali třeba hodně dlouho. V jeho domě pobývali lidé nejrůznějšího vzdělání, nejrůznější životní úrovně, s nejrůznějšími přiljmy a z nejrůznějších prostředí... a tak mohl svá díla stále obohacovat nejrozmanitějšími a nejrozdílnějšími postavami. Vyzískal od svých hostů všechno, co mu mohli poskytnout: jejich moudrost i nevědomost, silné i slabé povahové stránky, špatné i zábavné vlastnosti. Nikdy se nepokoušel protivníka v debatě zakřiknout, zdolat hrubou přesilou — šlo mu o podstatu diskuse a ne o to, zda v ní zvítězí.

Kdekdo podává svědectví o jeho dynamické osobnosti. Janet Winshipová, dcera jeho přátel z Napa, vypráví, jak hosté někdy seděli v lenoškách mlčky a skleslí, unudění a bez zájmu, ale sotva přišel Jack, najednou jako by do nich vjel elektrický proud a okamžitě se vzpružili, nejen

tělesně, ale i duševně — hned měli dobrou náladu. Nepůsobila na ně jen jeho úžasná vitalita, ale šířil kolem sebe svůj vnitřní žár, byl čilý jako rtuť a sálal životem, takže jeho radost ze života a dobrá nálada působila na každého nakažlivě. Irvine to vyjádřil za mnoho Jackových přátel slovy: „Jack London byl nabit obrovskou životní silou.“

Než šel večer spát, obvykle v jedenáct hodin, připravil mu Nakata na noční stolek papír, tužky, korektury z tiskárny, rozečtené knihy a brožury, rukopisy, které mu zaslali k přečtení a posouzení lidé bažící po literárním uplatnění, něco lehkého k jídlu, aby Jack měl v noci co zakousnout, kdyby potřeboval zahnat spánek, krabici cigaret a džbánky vychlazeného nápoje, aby si mohl svažit ústa vyprahlá ustavičným kouřením. Na verandě dlouho v šumivém tichu svítila lampa a Jack tam o samotě studoval, dělal si poznámky, kouřil, popíjel chlazený nápoj, hloubal nad stránkami lživých výroků, moudrých výroků, spravedlivých výroků i takových, které nasvědčovaly, jak může být člověk vůči člověku nelidský ... až ho oči pálily, jako by měl pod víčky zadřená zrnka prachu. Neustále se štvál, nejen aby získal nové a nové vědomosti, ale také ze strachu, aby ve světě nezameškal něco nového nebo důležitého. A vždycky měl na nočním stole dva svazky dobrodružných „Cest po Africe“ od Paula de Chaillu, s nimiž se nesmělo hnout — první četbu, která se mu dostala do rukou, když jako osmičletý chlapec žil na ranči v Livermoru. Ta kniha měla podtitul „Věk vikingů“.

Asi hodinu po půlnoci si zápalkou založil místo v knize, kam až dočetl, a potom nařídil ručičku na ciferníku z lepenky, zavěšeném zvenčí na dveřích, aby Nakata věděl, kdy ho má vzbudit. Málokdy si dopřál víc než pět hodin spánku a dával se ráno vzbudit nejpozději v šest. Obvykle mu Nakata už o páté nosil kávu a potom Jack na loži pročítal stránky, které předešlého dne napsal, opsané na stroji Charmianou, pak si přečetl různé úřední zprávy a technické studie, které si objednával, opravil poslední došlé korektury z tiskárny a zaznamenal si pracovní program na celý den nebo náměty k povídkám, které chtěl psát. V osm už seděl u stolu, psal svých denních tisíc slov a přitom se chvílemi podíval na sloku připíchnutou na zdi:

*K denní práci zasedej,
pílně u ní vytrvej!*

*Nežli navždy zavřu oči,
ať má práce dobře skončit!*

Do jedenácti splnil svůj úkol, napsal tisíc slov, a hned se vrhl na úžasné kupy každodenní obchodní a soukromé korespondence. Dostával už průměrně deset tisíc dopisů ročně a na každický z nich dopodrobna a zdvořile odpovídal. Často přečetl za den skoro sto dopisů a nadiktoval, co se má na ně odpovědět.

Všichni hosté věděli, že Jack má dopoledne vyhrazeno k práci a potřebuje klid. Po osmihodinové práci vyšel v jednu po poledni na verandu před jídelnou, vlasy rozčepýřené, bílou košili u krku rozhalenou, se zeleným štítkem proti slunci sesunutým do očí, s cigaretou mezi rty a s papíry v ruce. Zavolal „Haló, lidi!“ a hned ho byl plný pokoj, plný jeho magnetického tepla, jeho nevinného chlapeckého úsměvu, jeho prudce oživené a nakažlivé človehčiny. Jeho příchod znamenal, že začíná zábava, která neskončí až do večera.

Po obědě, který někdy trval dvě hodiny, jestliže se u stolu rozproudil obzvláště zajímavý nebo zábavný rozhovor, stáli už na dvoře mezi obytným domem a stodolou osedlaní koně. Všichni nasedli do sedel, Jack v čele společnosti vyjel na vrcholek hory Sonoma a vedl ji po hřebeni kopců, odkud byla vyhlídka na celý sanfranciský záliv; když svítilo slunce, zavedl ji cvalet k jezírku, kam vtékaly horské potůčky a na němž dal Jack postavit kamennou hráz, aby se tam shromažďovala voda. Ve srubu z otesaných kmenů se všichni převlékli do koupacích obleků, plavali, projížděli se v kanoích bojovných domorodců, které si přivezl z jižního Tichomoří, slunili se na malém přístavišti, dělali plochými kamínky na vodě žabky, sváděli turnaje a indiánské zápasy, boxovali a navzájem se shazovali do vody, jestliže se v kanoích vozili oblečení. Když se začalo smrákat, vracela se společnost na koních s Jackem v čele santálovými, borovico-vými s manzanitovými lesy stezkou, která vedla kolem Vlkova domu, kde museli všichni sesednout s koní a Jack je vodil pod lešeními, líčil jim, jak bude Vlkův dům krásný, ukazoval jim silné kamenné zdi, vysvětloval, že nepotřebuje dát dům pojistit proti ohni, poněvadž všechno vnitřní potrubí je obaleno asbestem, všechno, co je v domě ze dřeva, má ohnivzdorný nátěr, dokonce i kamenné zdi a krytina střechy.

Po návratu na ranč se všichni převlékli, seznámili se s novými hosty, kteří zatím přijeli, dobře se navečeřeli a pak debatovali o politických událostech ve světě a o filosofických problémech. Karty byly Jackovou oblíbenou zábavou, a tak se brzy po večeři pustili do hazardních her, ale sázky nesměly být nikdy vyšší než pětadvacet centů. Jack dosud rád vymýšlel všelijaké zábavné hry, při nichž bylo hodně smíchu. Když přijel na ranč někdo z anarchistů, například Emma Goldmanová, Jack mu dal na jídelní stůl do talíře knížku s názvem „Rámus“, vytištěným velkými písmeny na deskách. Nic zlého netušící anarchistu knížku otevřel a vybuchla v ní schovaná prskavka. Obvykle se zarazil nebo polekal, a Jack mu hned začal dokazovat, že anarchisté nikdy nesvedou násilím provést politický převrat, i kdyby k tomu měli příležitost. Pro ty, kdo byli u Jacka poprvé, měl zase přichystanou sklenici vody s dírkou ve stěně, aby je rozesmál, poněvadž byli celí zaražení, že sedí u jednoho stolu s Jackem Londonem, a takřka ani nedutali, natož aby mohli jíst.

Finn Frolich, norský sochař a námořník, který se dovedl řehonit jako málokdo ze smrtelníků, div lidem nezaléhaly uši, a z něhož si proto Jack udělal dvorního sochaře a šprýmaře, vzpomíná: „Když jsem přijel, hráli si tam jako děti, prováděli všelijaké kousky a legrace, a když si někdo ztropil žert z Jacka, Jack se tomu zasmál ještě víc než my.“ Oblíbeným kouskem bylo postavit někoho ke dveřím v jídelně, jako by se na nich mělo odměřit, kam až sahá, a pak mu za hlavou z druhé strany praštit do dveří kladivem. Nejvíce smíchu vždycky vzbudil uličnický kousek, jež prováděli bázlivým lidem: provrtali hostu v pokoji otvory v podlaze a provlékli jimi provazy, jež přivázali k nohám postele. Když host usnul, začali dole tahat za provazy a prudce rozhoupali postel. Host, tak jak byl, vyběhl na dvůr a křičel: „Zemětřesení! Zemětřesení!“ Při jiné hře posadili nového hosta na zem, nakázali mu roztáhnout nohy a udělali mu mezi nimi rybníček. Musel honem vodu zahradit hrázkami z hlíny, ale když vody pořád přibývalo a obětní beránek zuřivě kupil víc a víc hlíny na hrázky, aby voda nepřetekla, chytili ho za nohy a stáhli ho do louže, kterou si sám připravil. „Jack byl zkrátka velké dítě,“ řekl o něm jeho sonomský soused Carrie Burlingame. „Dělal všechno s vervou — i když odpočíval nebo se bavil, vynakládal na to veškerou energii.“ Když se jednalo o zábavu a legraci,

dovedl se i obětovat: jednou večer hosté posměšně pochybovali o pravdivosti jeho vyprávění, jak na Šalomounových ostrovech jedl syrové ryby, a Jack jim navrhl, že ten, kdo sejme náhodou nejnižší kartu, musí sníst zlatou rybku z ozdobného akvária na stole. Všichni s tím souhlasili a začali pořadě snímat karty: nejnižší připadla na mladého novomanžela. Strčil ruku do akvária, vytáhl za ocásek zlatou rybku a polkl ji — odměnili ho smíchem a potleskem a jeho mladá žena křičela, že ho už víckrát nepolíbí.

Jacka raně dvojnásob těšil proto, že mohl svým hostům poskytnout zábavu. Nejčastěji u něho pobýval George Sterling s ostře řezanou indiánskou tvář a s čelem nad obočím nápadně zešíkmeným, takže si je pečlivě zakrýval dopředu sčesanými kudrnatými vlasy. Byl neobyčejně ošklivý, ale přitom měl zvláštní kouzlo v jemném, téměř průsvitném obličejí, a hluboký cit pro všechno, co lidem působí bolest. Psal verše, někdy skvělé, někdy zas hodně bombastické, přetížené citáty z bible a zbytečně okázalými příkrasami. Jeho žena Carrie měla krásný junonský zjev podobně jako Bessie Maddernová a George Sterling, ačkoli byl tak útlocitný, že by doma nedovolil zabít ani pavouka, zraňoval ji zcela bezcitně, kdykoli se mu zalíbila jiná žena. Na rozdíl od Jacka neměl ani ponětí, co to je život proletáře, protože ho podporoval bohatý strýc; byl záletný jako Don Juan, u žen měl velké úspěchy, hodně pil a vůbec byl téměř dokonalým typem už vymírajícího bohémského básníka.

Vyprávělo se, že když George Sterling v nějaké hazardní hře prohrál, hleděl si prohru vynahradiť tím, že vypil Jackovi hodně alkoholu, a když prohrál Jack, pokaždé stačilo, aby Georgeovi písemně připomněl jedno slovo, a hned svých prohraných pětadvacet centů dostal zpátky. V jídelně stály na příborníku v řadě láhve různých alkoholických nápojů, hosté si z nich mohli nalévat, kolik chtěli, ale Jack s nimi kolikrát celé týdny nevypil ani sklenku koktailu. V Tokiu, na dlouhé plavbě na ŠNARKU a v Renu s kolegy reportéry hodně pil, ale na ranči nepil skoro nic, jen občas ve společnosti, aby nekazil zábavu.

Glen Ellen bylo tehdy veselé městečko a na hlavní ulici mělo hodně výčepů. Když to Jacka doma omrzelo, když chtěl na chvíli shodit těžké břemeno povinností a vytrhnout se z práce, když měl po krk ustavičných hostů, zapřahal si do bryčky dva páry koní, pověsil jim na chomouty rolničky a jako splašený se rozjel klikatou prašnou cestou do městečka.

Jakmile lidé v Glen Ellen uslyšeli cinkat rolničky, hned jako by se městečko otupělé horkem probudilo. Někdo vykřikl „Jede k nám Jack London!“ a za chvíli se to už dovědelo celé městečko, rozesmátí lidé se vyhnuli do ulic, výčepníci jako obživlí začali vytahovat láhve a leštit sklenice. Když Jack projížděl hlavní ulicí, všichni křičeli: „Hej, Jacku!“, a když Jack uviděl někoho známého, vzkřikl „Haló, Bille!“ a zamával nad hlavou sombreroem. U prvního kůlu uvázal koně a vešel do nejbližšího výčepu, kde jako bývalý námořník „dal nalít“ každému, kdo tam přišel. Nikdo jiný nesměl ani vytáhnout peníze. Lidé ho škádlili, smáli se jeho povídání, vykládali mu, co si myslí o jeho nejposlednější knize, a vyprávěli mu nové vtipy, obzvláště židovské anekdoty, které měl ze všeho nejraději. Vypil pár sklenic a za chvíli odešel zas do druhého výčepu, kde už na něho čekali tamější obvyklí hosté, poplácávali ho po rameni a tiskli mu ruku. Znovu všem platil pití a zas bylo hodně mužského smíchu a kamarádského povídání. V městečku bylo snad nejméně deset výčepů, ale Jack do každého zašel a všude vypil čtvrtku whisky, takže se do setmění setkal snad se stovkou mužů a se všemi si popovídal a užil zábavy. Pak se vrátil k své bryčce, odvázal koně a provázen voláním všech lidí z městečka „Na shledanou, Jacku! Přijed k nám zas brzy!“ odjížděl tryskem po dlouhé prašné cestě ovocnými sady, vinicemi a pahorkatým krajem. Lidé z Glen Ellen vyprávějí, že jejich nejradostnější dny v roce byly, když se vysoko na svahu rozcinkaly rolničky a Jack London v širokém sombrero, s vlající kravatou a v bílé košili tryskem sjížděl s kopce na kozlíku za bujným čtyřspřežím, s blaženým úsměvem v tváři a s přátelským pozdravem pro každého.

Jednou týdně si odpoledne zapřáhl dva své nejrychlejší koně a tryskem se rozjel do Santa Rosa, okresního městečka vzdáleného šestnáct mil, střediska obchodu s chmelem, vinnými hrozny a vínem, kde se hodně pilo, ale kde lidé byli takoví zpátečníci, že Jackovy socialistické názory nejen pokládali za scestné, ale považovali ho za blázna. Vjel do hlavní ulice, rolničky na postrojích cinkaly, zastavil před realitní kanceláří Iry Pyla, vzkřikl „Hej, Pyle, jedeme!“ a za chvíli Jack a Pyle už přicválali k hotelu Overton, Jack se v baru vstoje opřel ve svém koutku na konci nálevního pultu a objednal si čtvrtku whisky. Vždycky pil whisky ze sklenice na vodu a Pylovi dal nalít dvakrát, ale pak si Pyle už musel sám platit, co vypil, ať toho vypil kolik chtěl.

Když se před Pylem řeklo, že chodil s Jackem pít, Pyle protestoval: „Kdepak, já jsem se k Jackovi vůbec nemohl rovnat! To nemohl nikdo! Jack byl třída pro sebe. Jack pil o sto šest, než jsem já vypil jednu sklenici, Jack jich polkl už pět! A přitom je divné, že v baru nemluvil skoro o ničem jiném než o socialismu. Jezdil k nám do Santa Rosa, protože se u nás měl s kým hádat. Lidi ho u nás neviděli rádi, protože před soudci, před členy výboru obchodní komory a před každým, ať to byl kdo chtěl, vykládal, jak je kapitalistický řád zkorumpovaný.“

Za celá ta leta, co k nám jezdil do Santa Rosa, jakživ jsem nikoho neslyšel, že by mu dal za pravdu. Když jsem se ho zeptal, jak to vlastně bude v tom socialistickém státě, vždycky se na chvilku zamyslel, pak zavrtěl hlavou a řekl: „Počkej, až si dám ještě čtvrtku, pak se mi jazyk rozváže.“ A vždycky se mu po druhé čtvrtce jazyk rozvázal a Jack začal vykládat, jak potom bude všechno laciné, protože se už nebude vyrábět pro zisk.“

Nebyl-li Jack s Pylem, přišel do baru v hotelu Overton, rychle se rozhlédl kolem, stoupl si ve svém koutku u nálevního pultu, vypil sklenici whisky nebo dvě a kývl na někoho, aby si s ním šel popovídat. A hned spustil: „Příteli, vy jste minule říkal, že socialismus zabije soukromou iniciativu, a já jsem pak o tom přemýšlel, a tak mi napadlo leccos nového...“ Přátelé, kteří s ním popíjeli, vzpomínají, že jim vykládal o válce, o chudobě jako příčině zločinnosti, o biologii, dělnických organizacích, o Freudovi a psychoanalýze, o zkorumpovaném soudnictví, o literatuře, o cestování a budoucí utopii. Když vyprázdnil láhev whisky s každým, kdo se s ním chtěl napít, vsedl do bryčky a jel domů. Nikdy se mu při jízdě nestala žádná nehoda, ale když se napil, rád jezdil hodně rychle. Výčepník Billy Hill, který Jacka obsluhoval v baru Overton a později v barech Feters a Boyes Springs, vypráví: „Jack snesl alkoholu tolik jako nikdo jiný, koho jsem znal, ale nikdy se neopil. Vždycky se držel zpříma a choval se důstojně. Když měl dost, tak toho nechal. Nikdy jsem nebyl svědkem, že by se choval nepěkně, nebo že by se s někým hádal. Vždycky byl dobromyslný a veselý, nepřel se s nikým, o kom věděl, že se nedovede přít, ale Jack byl vždycky o tolik chytřejší než jeho protivník, že pokaždé spor vyhrál.“ Pyle také říká, že nikdy neviděl Jacka opilého. Jako pravý Ir snesl spoustu whisky. Pitím se zbavoval únavy a nervového napětí, rozvázal se

mu jazyk, mozek se mu zbystřil — pití mu skýtaló úlevu, změnu a odpočinek.

Pití mu také poskytlo námět ke knize, jež mu měla získat tolik slávy a hany jako žádná jiná, kterou vydal. „Jack Ječmínek“ je autobiografický román — víceméně pravdivě líčí jeho pitky, ale jak tomu obvykle bývá s autobiografickými romány, „jediná vada „Jacka Ječmínka“ je, že jsem v té knize nepověděl celou pravdu, poněvadž jsem si netroufal povědět celou pravdu.“ Nepřiznal se v ní, jak v některých životních obdobích trpěl malomyslností, jak v takové sklíčené náladě dostával záchvaty melancholie, jak mu otravovalo duši i mozek vědomí, že je nemanželský syn, ačkoli je v dobré náladě dovedl snadno odbýt jako malichernost, a že často pil proto, aby na tu přece jen trpkou a nezvratnou skutečnost na chvíli zapomněl. Co nejbědlivěji si dával pozor, aby občasně záchvaty sklíčenosti před každým utajil. Přepadaly ho jen málokdy, nanejvýš tak pětkrát až šestkrát do roka, takže se u něho nestaly máníi jako u většiny tvůrčích umělců, ale když ho posedly, nenáviděl svou práci, socialismus, milovaný ranč, své přátele, svou materialistickou filosofii, a skvěle dovedl hájit právo každého člověka na sebevraždu. V takových okamžicích se mu břemeno starostí zdálo příliš těžké a říkal si, že je už neunes, v takových okamžicích hodně pil, zhrubl, znečitlivěl, někdy býval nesympatický a hádavý. Ale ty záchvaty zas přešly, často i za den.

„Jack Ječmínek“ má svou literární hodnotu, ačkoli nepodává zcela věrný obraz Jackova života. Čte se jako román, je živý, překrásně poctivý, prostý, dojemný, obsahuje skvělá místa jasně logických úvah a stále je klasickou knihou o pití. I kdyby všechno v ní bylo jen vymyšlené, přece by to byl přesvědčivý a dokonalý román. „Jack Ječmínek“ vyšel na pokračování v SATURDAY EVENING POST a později i knižně a četly jej milióny lidí. Duchovní si z té knihy vybírali mravní naučení proti pití, abstinentní spolky, prohibiční organizace a společnosti usilující o zrušení výčepů se k ní nadšeně hlásily, přetiskovaly z ní celé pasáže v letáčích, které rozšiřovaly ve statisících výtisků. Kulturní pracovníci, politikové, redaktori novin a časopisů, přednášeči a funkcionáři různých organizací, kteří by se nebyli shodli v ničem jiném na světě, spojenými silami potírali „Jackem Ječmínkem“ zájmy výrobců alkoholických nápojů i těch, kdo jimi obchodovali. Ten román byl i zfilmován a lihovary

nabízely obrovské sumy, aby promítání filmu bylo zakázáno. Film vzbudil tak obrovskou senzací a měl tak velký ohlas, že statisíce lidí, kteří se od svých školních let ani nepodívali do žádné knihy, chtivě čtli „Jacka Ječmínka“. Jack v něm vylíčil své vítězství nad alkoholem, ale přesto ho veřejnost, která často nedovede správně pochopit, co čte, prohlášovala za nevyléčitelného pijáka.

Protože „Jack Ječmínek“ byl v literatuře něčím novým a upoutal všeobecnou pozornost veřejnosti, stal se jedním z hlavních faktorů, které se v roce 1919 zasloužily o zavedení prohibice ve Spojených státech. Že tím románem člověk, který často pil, aby v sobě otupil vědomí o svém nemanželském původu, jímž se často trýznil, kterému pití poskytovalo hodně zábavy, vzrušení a kamarádského povescení, kterého ani ve snu nenapadlo, že by měl pití zanechat — že tenhle člověk nakonec vydatně pomohl reformátorům uvalit na Spojené státy hrůzy prohibičního období, to je ironie osudu příznačná pro Jacka, který v životě poznal spoustu sžíravě ironických momentů.

V každém ročním období Jack sledoval, jak se na jeho polích na jaře oře a seje, jak se v létě zelenají a koncem léta žloutnou, jak v dlouhém suchém podzimu jsou sluncem spálená až do rezava a v zimě zatopená deštěm. Byl hrdý na své psaní, na svou vypletou žírnou půdu, na své nesčíslné přátele. Když se mu všechno v životě dařilo, ani na chvíli mu z hezkého irského obličejce nevymizel „věčný úsměv“. Finn Frolich o něm říká: „Jakživ jsem nepoznal člověka tak hezkého, s tak velkým osobním kouzlem. Kdyby tolik osobního kouzla měl nějaký kazatel, celý svět by se stal pobožný. Když Jack mluvil, byl báječný: oči mu zářily, hovořil citlivě a zaujatě. Rozdával své vnitřní bohatství, mozek mu pracoval na plné obrátky, člověk mu nemohl stačit. Ať mluvil Jack o čemkoli, hned se mu rty roztáhly v úsměvu, a už řekl něco tak humorného, že člověk pukal smíchy.“

Jack byl šťasten, kdekdo ho měl rád, a práce mu šla kupředu mlhovými kroky.

Jakmile koupil Hillův ranč, hned napsal Cloudesleymu Johnsonovi: „Nehodlám na ranči hospodařit — nechám tam vykácet a vyplet jen kus půdy, abych měl seno pro koně.“ Ale pak se čím dál tím více zajímal o farmaření

a obhospodařování ranče a neustále na něm něco zřizoval. Předplatil si zemědělské listy a časopisy a posílal na zemědělské ústavy Kalifornské university a státní úřady žádosti o udělení informací a rad. Za několik měsíců si uvědomil, že ho zemědělství a dobytkářství nesmírně zajímá a láká. Už ho omrzelo hledat dobrodružství v dalekých krajích, a tak se pouštěl do dobrodružství doma: zemědělství se stalo jeho koníčkem. Jako obvykle se do té nové činnosti vrhl horlivě a zanedlouho si už získal tak velké vědomosti, že se málem stal odborným znalcem zemědělství a dobytkářství.

Čím déle studoval kalifornské zemědělství, tím více chyb na něm nalézal, a čím dál mu bylo jasnější, že je v rozporu s ekonomickými zásadami, že je nesystematické, nehospodárné a potřebuje důkladnou přeměnu podle vědeckých metod. Měl půdu, měl peníze, měl vědomosti a energii, a umínil si, že toho všeho použije, aby zachránil kalifornské zemědělství. Jak studiem pronikal čím dál tím víc do daných problémů, začínala se mu pomalu ujasňovat představa typického a vzorného hospodářství, jaké si jeho nevlastní otec John London zamýšlel zřídit v Alamedě a v Livermoru. To vzorné hospodářství si zřídí on, Jack, a za deset let už bude vzorem pro celou Kalifornii jako hospodaření na vyšší úrovni a poučením pro kalifornské armáde, jak si mají počínat, aby dosáhli kvalitnějších produktů rostlinné a živočišné výroby.

Přesvědčil se, že půda na Kohlerově a Lamottově ranči je vypotřebovaná a neproduktivní, poněvadž ji dřívější majitelé sice obdělávali, ale nezürodňovali hnojivem a nenechávali ležet ladem. Zjistil, že místní skot je zdegenerovaný, že se k chovu nepoužívá čistokrevných býků a že koně, vepři a kozy jsou z podřadného plemena. „Úrodná kalifornská pahorkatina leží ladem: musíme podle vědeckých metod proměnit svahy v žírnou půdu.“ Byl přesvědčen, že když půdu zlepší a stav dobytka posílí zavedením lepších chovných kusů, když se mu podaří farmáře přesvědčit, že je nutno zanechat dosavadních pustošivých způsobů hospodaření, které půdu jen vykořisťuje a navíc je příčinou, že zemědělství je ztrátové, když sám bude hospodařit tak, aby získával jen produkty nejlepší jakosti, pak se mu podaří tamější kraj zachránit pro zemědělství. K tomu cíli se s Elizou pustil do práce s veškerým úsilím, s vynaložením veškeré energie a všech svých schopností.

„Zatím jsem vlastníkem celkem šesti zbankrotělých rančů. Ale mých šest rančů vlastně představuje nejméně osmnáct

bankrotů, to znamená: nejméně osmnáct farmářů staré školy na nich přišlo nejen o peníze, ale i o půdu, a dřelo se tedy nadarmo. A já se ptám: když se do toho vložím svým moz-
kem, úsudkem a vším, co jsem načerpal z vědomostí o farma-
ření, podaří se mi vydobýt zisk z půdy, na níž osmnáct
farmářů udělalo bankrot? Hodlám ten úkol splnit, protože
do práce vložím všechno, co mám: sebe, svou mužnou
energii, své jmění, své znalosti načerpané z knih.“

Na vypleté a zorané půdě tři roky po sobě zasel víkev
a kanadský hrách, aby ji obohatil bílkovinami. Proti
obytnému domu byla na svazích pahorků neobděláaná půda:
poslal tam lidi, aby ji vyčistili a upravili ji terasovitě tak,
jak to viděl v Koreji. Na vinicích zaměstnal dvaadvacet
mužů, kteří na révových keřích ořezávali šlahouny, jimiž
se réva vysilovala. Jack řekl Elize, že nyní se mu pěstování
vína začne vyplácet, ale hned nato odjel na Washoe Banu
do Glen Ellen hlasovat pro místní prohibici, neboť byl
přesvědčen, že výčepy existenčně ohrožují dělnické rodiny.
Byl také přesvědčen, že za několik let bude prohibice uzáko-
něna v celých Státech, a zároveň i věděl, že půda na jeho
vinicích je vyčerpaná a nemůže nést dobrou sklizeň, proto
dal na sedmi stech akrech vykopat révu, pohnout půdu
a v ní dal zasázet eukalypty, poněvadž se studiem poučil,
že skýtají tvrdé dřevo zvané kavkazský ořech, po němž bude
brzy velká poptávka při výrobě nábytku i jako po stavebním
dříví. První rok dal nasázet deset tisíc stromů, druhý rok
ještě dvacet tisíc, až měl celkem sto čtyřicet tisíc eukalyptů,
a zasazení ho stálo 26.862 dolarů. „Teď mě to stojí spoustu
peněz, ale ode dneška za dvacet let mi budou vynášet celé
jmění a nebude s nimi vůbec žádná práce.“ Představoval si,
že peníze investoval spolehlivě, jako kdyby si je uložil
v bance, a ještě navíc mu ponesou úroky.

Na polích dal zasít řepu, mrkev, krmný oves, žito, ječmen,
trávu a vojtěšku, jejímuž pěstování se Eliza naučila v dálko-
vých kursech Kalifornské university — Jack chtěl na ranči
pěstovat všechno, o čem věděl, že to bude potřebovat jako
krmivo pro prvotřídní dobytek. Když Luther Burbank
přivezl ze svých pokusných zahrad v Santa Rosa několik
bezostnatých kaktusů, které si vypěstoval, Jack jich nasázal
celé pole na krmivo, protože se rád pouštěl do všelijakých
pokusů.

Jako základ pro svůj chov koní koupil čistokrevného
anglického hřebce a k němu čtyři čistokrevné anglické klisny.

Věděl, že vbrzku bude zas poptávka po těžkých tažných koních, a proto skoupil v San Francisku všechny pivovarské kobyly, kterým se na městské dlažbě otláčila kopyta. Když potřeboval ještě víc tažných koní k vyčistění a zorání polí a nemohl nalézt odrůdu, jakou chtěl mít, zajel si je koupit do jižní Kalifornie. Když nemohl nalézt krávy a jalovice právě toho plemena, jaké potřeboval, sháněl se po nich v zemědělských věstnících a zajel si do Sacramenta na výstavu skotu, kde koupil nejlepší kusy: za osm set dolarů krátkorohého chovného býka vyznamenaného první cenou a šest pěkných jalovic po tři sta padesáti dolarech. Na trhu nakoupil nejlepší čistokrevné vepře a pětáosmdesát angorských koz. Doufal, že po uplynutí několika chovných období některé kusy levně prodá majitelům sousedních rančů, aby si mohli zlepšit jakost svého skotu. Představoval si, že takhle vytřídí kusy dobytka a vepře, jak ho John London naučil třídit zeleninu, poněvadž chtěl do sanfranciských hotelů dodávat jen prvotřídní hovězí maso. Aby svá rychle se množící stáda dobytka měl kde ustájit, dal postavit nové chlévy, nové vepřince, koupil v Glen Ellen úplné zařízení kovárny a přestěhoval je na svůj ranč. Aby měl kde ubytovat neustále vzrůstající počet zemědělských pracovníků, dal pro ně a jejich rodiny vystavět domky a sruby.

Psal články o moderních zemědělských metodách, dělal si poznámky pro nový román na námět „návrat k půdě“, ustavičně si dopisoval se zemědělskými spolky a pokusnými farmami a poskytoval zvědavým reportérům interviewy o své nové činnosti. Na zájezdu do Los Angeles, kde chtěl koupit kusy hovězího dobytka a kde byl hostem v domě svého starého přítele, sochaře Felixe Piana, řekl reportérům: „Začal jsem studovat problém, proč byla za čtyřicet až padesát let úplně vyčerpána úrodná půda v této části Kalifornie, když se v Číně obhospodařuje půda už tisíce let, a pořád je úrodná. Předsevzal jsem si, že zatím nebudu chtít na ranči nic vyzískat prodejem. To, co se mi na něm urodí, využítuji jako krmivo pro svá zvířata. Koupil jsem první zařízení pro strojní hnojení, jaké tu ještě nikdo neviděl. Dal jsem vykopat křoví a půdu jsem využíval na pole. U nás se dostáváme do zoufalé situace: za deset let se ve Spojených státech rozmnožil počet krků, které musíme nakrmit, o šestnáct miliónů, a proto správné hospodaření s půdou zaručeně musí být výnosné. Za deset let by se počet prasat, ovci, dojných krav a hovězího dobytka snížil,

protože se velké ranče rozpadly na malé farmy. A proto majitel ranče, který vypěstuje pěkný dobytek a umí racionálně hospodařit s půdou, má úspěch zaručen.“

Tím, že Jack svých tisíc sto akrů obhospodařoval, mohl poskytnout lidem zaměstnání a živobytí. Dal Elize příkaz, že v žádném případě nesmí odmítnout nikoho, kdo hledá práci, dokud si nevydělá mzdu za tři až čtyři dny a dokud se tři až čtyři dny řádně nenají. Když pro někoho nebude na ranči práce, má si pro něho nějakou vymyslet, má ho třeba poslat odklízet kamení na svazích pahorků nebo stavět ploty v lukách. Fornimu, který dohlížel na stavbu Vlkova domu, Jack řekl: „Forni, nikdy nikoho neodhánějte, dokud ho tu nenecháte pracovat aspoň tři dny, a bude-li pracovat dobře, nechte si ho tady.“ Trestanci ve vězeních ve Folsomu a San Quentinu, jimž mohl být podmíněčně prominut zbytek trestu, když si mohli najít práci, psali Jackovi, aby si je najal. Jack téměř vždy oznámil ředitelství vězení, že takovému člověku práci dá, a odmítl ji jen tehdy, když neměl volnou ani pryčnu, ani koutek v žádném domku. Jeden trestanec, který žádal o práci, ale kterého Jack musel odmítnout, pak napsal: „Nemusíte se bát, když mě necháte pracovat u sebe v domě. Já Vám nic neukradnu, já jsem jen vrah.“ Téměř stále na ranči pracovalo a žilo deset propuštěných trestanců.

Když v roce 1913 dosáhlo hospodaření na ranči vrcholu, úhrn platů a mezd představoval úžasnou sumu tři tisíce dolarů měsíčně. Jack zaměstnával třiapadesát mužů v zemědělství a pětatřicet na stavbě Vlkova domu, to znamená, že poskytoval živobytí téměř stovce mužů a jejich rodinám, tedy asi pěti stům osob. Ve výplatní dny jezdil na Washoe Banu po polích a kopcích a vyplácel lidem zlatáky z váčků, které měl přivázány kolem pasu — z takových, jaké s sebou nosil v Klondiku. Vědomí, že dává lidem práci, působilo mu upřímnou a nekonečnou radost, stejně jako pokusnické hospodaření a pomyšlení, že je spasitelem kalifornského zemědělství.

Farmáři ze sousedství se mu vysmívali, že chce mít z každého pole tři sklizně za rok a že prý zavádí na ranči „socialistickou osmihodinovou práci“. Kdysi se mu lidé také vysmívali, že si staví SNARK, tak jako se mu nyní vysmívali, že si zřizuje moderní ranč, a Jack si stěžoval: „Člověk si zvolí poctivý a rozumný způsob, jak vydělávat a utrácet peníze, a kdekdo se na něho vrhá.

Kdybych sázel na dostihové koně, nebo kdybych si vydržoval baletky, pak by lidé nade mnou shovívavě přimhouřili oko.“ Lidem, kteří ho varovali, aby neutápěl tak obrovské částky v nejistých experimentech, Jack odpovídal: „Vydělávám si peníze poctivě, nejsou vydřené na lidech, kteří pro mne pracují. Když je chci vydávat na takový účel, abych lidem poskytl zaměstnání a abych pozvedl kalifornské zemědělství, proč bych neměl mít právo utrácet je za něco, co mi působí potěšení?“

A opravdu z toho potěšení měl. Každého nového hosta hrdě vodil do chlévů a ukazoval mu přesné záznamy, kolik mléka která kráva nadojí, prováděl ho po polích, na nichž pěstoval vojtěšku a kukuřici, a chlubil se, jaký se mu podařilo vypěstovat chov skotu, vepřů a koz. Nesmírně si na tom zakládal, jestliže některý jeho kus na výstavě získal cenu. Když si vyplul v ROAMERU na moře, nebo když si s Charmianou a s Nakatou vyjel v kočárku se čtyřspřežím, ustavičně udílel písemné rady a pokyny Elize, která mu zas dopodrobna psala o všem, co se na ranči děje. Jack jí píše: „Postarej se, aby se vepři na pastvě řádně vykrmili. Zavodnili mi dobře ječmenná pole? Nezapomeň prodat toho hřebce. Jsou motor a hadice dobře chráněné před horkým sluncem? Jsem celý nešťastný, že prasata mají červenku. Dej opravit základy stáje pro dvacet koní. Je už čas dohlédnout, aby každý kůň a každé hříbě se k pastvě ještě přikrmovali. Na stavbě zdi kolem ovocného sadu dej pozor, aby ji zedníci stavěli jen z velikých kamenů!“ Všechno muselo být největší a nejlepší: Vlkův dům, kamená zeď, vojtěška a kukuřice, angličtí koně, krávy, vepři, kozy ... pořád ten silný a prudký pud, aby byl králem mezi lidmi (ten poslední bude prvním a levoboček bude králem!), a právě tak mocný mesiášský komplex ho ponoukal, že musí obrodit americkou literaturu i zachránit americké národní hospodářství a zemědělství před zničením a zkázou.

Psaním si vydělával ročně pětasedmdesát tisíc a utrácel ročně sto tisíc. Veškerý jeho majetek byl těžce zadlužen, dokonce i příští výdělek. Prvního každého měsíce se Jack s Elizou posadili u psacího stolu v koutě jídelny, dali hlavy dohromady nad účetní knihou a soužili se starostmi, jak vykouzlit peníze, aby mohli dostát svým závazkům. Jednou byl Jack na tom tak zle, že si Eliza musela vypůjčit z banky pět set dolarů na svůj domek v Oaklandu, aby mohli koupit

krmivo pro dobytek. V dopisech, které Jack poslal na východ, jsou samé nářky, že zoufale potřebuje peníze. „Prosím Vás, pošlete ty dva tisíce dolarů, které mi dluhujete za povídky, stavím první zděné silo v Kalifornii...“ — „Musíte mi poslat zálohu pět tisíc dolarů na knižní vydání, protože musím postavit nový kravín...“ — „Potřebuji ihned 1.500 dolarů, musím koupit drtič kamení...“ — „Musíte mi ihned poukázat 1.500 dolarů, musím zřídít dlážděné odvodňovací strouhy, aby mi voda nespláchlá úrodnou prst...“ — „Uzavřete-li smlouvu na vydání série povídek a pošlete-li mi zálohu, umožníte mi koupit sousedního Freudova ranče v rozsahu čtyři sta akrů za poměrně nízkou cenu 4.500 dolarů.“ Redaktorům na východě dával zdarma poučení o vědeckých zemědělských metodách, ale ti mu někdy zlostně odpovídali: „Pane Londone, my přece za to nemůžeme, že si chcete koupit nový vrh podsvinčat,“ nebo „Domníváme se, že nemůžeme na sebe vzít odpovědnost za to, že potřebujete vyčistit půdu na nová pole.“ Jeden z nich měl dokonce tak šílenou odvahu, že mu napsal: „Prosím, ať si spisovatel má vlastní farmu, ale jen ať se nepokouší na ní farmařit!“ Byly průtahy, bylo soužení, docházelo k hádkám a naléhavé a někdy zlostné telegramy lítaly sem tam, ale Jack si peníze vždycky vydobyl, vždycky sehnal pár tisíc a dal si vystavět nikoli jedno zděné silo na kukuřici, ale hned dvě, a k tomu ještě chlév, mohl si koupit drtič kamení, mohl si zřídít mlé dlážděných odvodňovacích struh, mohl si koupit Freudův ranč, takže pak měl celkem tisíc pět set akrů půdy — a mohl dát střechu za dva tisíce pět set dolarů na Vlkův dům, jehož stavba ho za tři roky stála už sedmdesát tisíc dolarů, a ještě na ní zbývalo hodně práce. Čím rychleji se peníze hrnuly, tím rychleji Elize často proklouzávaly mezi prsty, ani nevěděla jak, protože každý přírůstek peněz pro Jacka znamenal, že si může najmout ještě víc lidí k práci, vyčistit ještě víc půdy a založit na ní ještě víc polí, že si může koupit nové kusy dobytka a zřídít nové zavodňovací a odvodňovací strouhy a potrubí.

Musel se starat o živobytí nejen pro ty, kdo u něho pracovali, ale ještě podporoval neustále vzrůstající počet příbuzných, příbuzných svých příbuzných, přátel a jejich přátel, hostů, lidí odkázaných na jeho dobročinnost a všelijakých příživníků a parazitů. Štědrost mu byla něčím stejně přirozeným jako dýchání. Každý tramp v Americe věděl,

že mu nejslavnější z jeho bývalých kolegů dá najíst i napít a že ho nechá u sebe vyspat, a tak se skoro všichni na své pouti zastavovali v domě na Krásném ranči. Jim Tully, který také kdysi býval trampem „na trati“ a také se pak proslavil jako spisovatel, vypráví, že jednou večer nějaký žebrák na Jackovi škemral, aby mu dal peníze na nocleh, a Jack mu strčil do ruky zlatý pětidolar. John Reinhold vzpomíná, že Jack přišel k němu do výčepu POSLEDNÍ NADĚJE, objednal si láhev whisky, vypil jen jednu sklenici, nechal na pultě zlatý pětidolar a řekl: „Johnny, pověz mládencům, že tu byl Jack London, ať mu připijí na zdraví.“

Trestanci mu posílali ručně pletené uzdy, které mu vůbec nebyly k ničemu. Poukazoval jim za každou dvacet dolarů, protože nemohl odbýt člověka, který sedí ve vězení a chce si vydělat pár dolarů.

Téměř všichni přátelé si od něho vypůjčovali peníze, nejen jednou, ale ustavičně. Nikdy mu z nich nevrátili ani dolar. Dostával poštou tisíce žádostí o peníze a většinou jim vždycky vyhověl. Úplně cizí lidé, také spisovatelé, ho žádali o podporu, aby mohli dokončit román, a on jim každý měsíc posílal šek. Když se socialistické a dělnické časopisy octly v peněžní tísní (jenže v té byly skoro pořád), posílal jim předplatné pro všechny své přátele a články a povídky, aby si je zdarma uveřejnily; když byli zatčeni socialističtí nebo dělničtí organizátoři, věnoval peníze na jejich obhájce. Když se stávky hroutily pro nedostatek peněz ve fondech, věnoval peníze na nouzové kuchyně. Když se dověděl o jedné ženě v Austrálii, která ve světové válce ztratila oba syny, posílal jí, aniž ho o to žádala, až nadosmrti padesát dolarů měsíčně. Když mu stará žena z hor ve státě New York psala usouzené dopisy, jakou má bídu, a on právě neměl v bance ani dolar, bombardoval Bretta prosebnými dopisy, aby té ženě poukázal peníze a strhl mu je z příštího honoráře. Když v San Francisku chtěli založit baletní školu, zavázal se, že na ni bude měsíčně platit tolik a tolik. Když mu neznámý soudruh socialista z Oregonu napsal, že mu přiveze na ranč svou těhotnou ženu se čtyřmi dětmi, aby je Jack nechal u sebe, než on se v Arizoně vyléčí z tuberkulózy, Jack mu telegraficky odpověděl, že je na ranči nemůže ubytovat, že nemá ani postel volnou. Ale ten soudruh s rodinou už z Oregonu odjel, a když přijeli na ranč, Jack se o svém telegramu ani nezmínil, rodinu živil a staral se o ni, když žena rodila své páté

dítě, a za půl roku po otcově návratu z Arizony mu Jack odevzdal rodinu v pořádku.

Stovky soudruhů socialistů mu psaly, zda by se pro ně na ranči nenalezla nějaká práce. „Dejte mi políčko a pár slepic, a já se už nějak užívím.“ — „Nemohl byste mi věnovat pár akrů půdy a krávu? Víc bych pro sebe a svou rodinu nepotřeboval.“ Jack Elize třeba nařídil, že už nesmí nikoho vzít na práci, a pak přišel na ranč dělník se ženou a s dětmi, který se doslechl, že tam člověk vždycky může nalézt práci, a Jack si ho najal sám. Eliza vedla účetnictví a podle jejího tvrzení Jack polovinu výdělku rozdával lidem. Kdyby se sečetly peníze, které lidem platil za úplně nepotřebnou práci, činilo by to dohromady dvě třetiny jeho příjmů. Každý z něho mohl vytáhnout peníze, kdo ho dovedl dojmut vyprávěním o svých osudech, ale často lidi podporoval, aniž ho o to žádali. Jen jednou odmítl pomoc: žena boxera Boba Fitzsimmonse mu telegrafovala, že ihned potřebuje sto dolarů, ale nevysvětlila, nač je potřebuje. Jack si lámal hlavu, jak si má sehnat tři tisíce dolarů na splátky pojistného, a tak jí telegraficky odpověděl, že je na mizině. Za dva dny četl v novinách, že paní Fitzsimmonsová přestála operaci na bezplatné klinice v okresní nemocnici. Jack si to nikdy neodpustil, a když ho pak lidé žádali o peníze, které neměl, raději si je vypůjčil.

Pro sebe utrácel málo, oblékal se a jedl skromně. Hostění přátel ho stálo celé jmění, ale oni ho málokdy na oplátku pohostili. Když měl jít někam na večeři, snědl před odchodem doma půl libry syrového tatarského bifteku, protože mu u jiných lidí nechutnalo. Když se jednalo o peníze, byl tak svědomitý, že u sebe žádnému hostu nedovolil, aby druhému hostu platil prohru směnkou. Dal si ji vystavit na své jméno, sám hostu vyplatil výhru a směnku na dlužné peníze strčil do krabice na doutníky. Jednou se Frolich procházel pod okny jeho pracovny, a najednou z jednoho vylítla spousta bílých papírků. Pár jich posbíral a viděl, že Jack zase vyhazuje roztrhané směnky z krabice na doutníky.

Jackův způsob života je typický pro kalifornského rodáka. Člověk, který se narodil a žije na kalifornské půdě, je tvor zcela kromobyčejný, jemůž obdobný se nikde jinde nenajde. Jako většina rodilých Kalifornňanů byl i Jack mírně stížen megalomanií: ve společnosti přátel a kamarádů se nikdy nevychloubal úspěchy v práci, ale ve skutečnosti byl na ně velice hrdý a sebevědomý. Při poznámkách ke stovkám

povídek, článků a románů, které hodlal napsat, jsou téměř vždy načrtána slova: „Skvělá povídka!“, „Úžasný román!“, „Nádherný námět!“, „Velkolepý pracovní materiál!“, „Obrovský příběh!“. Jako většina rodilých Kalifornanů byl statný silák, bodrý a tělesně zdatný, se silně vyvinutými smysly, zbožňoval tělesnou krásu, obratnost a sílu, rád se oddával tělesným požitkům a to ho vedlo k lásce k umění a kulturním vymoženostem. Byl hravý a dovádívý jako dítě. Nadevšechno měl rád smích, nikoli mírný a způsobný, ale bouřlivý. Jako většina rodilých Kalifornanů si nepotrpěl na formality, nenáviděl škrobené lidi, škrobené názory a zaujaté předsudky, nesnášel pouta tradice, byl divoký bouřlivák. Jako Španělé, první kalifornští bílí usadlíci, chtěl mít dům, kde naleznou útočiště všichni pocestní, vznešení i chudobní, a nikdo nesměl odtamtud odejít, aniž se dosyta nenajedl, nenapil a nevyspal. Byl nejšťastnější, když měl u stolu při jídle alespoň dvacet hostů. A jako španělští starousedlíci potřeboval kolem sebe prostor, v tom ohledu se nedovedl uskrovnovat, musel být pánem tak rozsáhlého území, aby mu trvalo kolik dní, než je na koni přejede z jednoho konce na druhý.

Tak jako první zlatokopové, kteří se začali usazovat v Kalifornii, opovrhoval penězi, protože se daly tak snadno a v takových spoustách získat, a rozhazoval je, aby světu ukázal, že není jejich otrokem. Marnotratně zacházel s bohatstvím své půdy, svého nadání, své pokladny a svého přátelství. Jako většina rodilých Kalifornanů se všemu oddával bezuzdně: práci, zábavě, veselí, milování, odpočinku, dobývání, tvoření. Byl samostatný, svéhlavý, nenechal se vodit za nos, byl náladový, rozmarový, často zlostný, umíněný, prchlivý, někdy až krutý. Jako většina rodilých Kalifornanů opovrhoval duševní i fyzickou zbabělost a byl velice odvážný. „Byl kurážný jako medvěd,“ řekl o něm Ira Pyle, „nerozpakoval se zarýt do kohokoli a čehokoli.“ Jako většina rodilých Kalifornanů se pokládal za pionýra, průkopníka, spolutvůrce nové a lepší civilizace. Všude kolem bylo tolik síly, tolik prostoru a bohatství, proto měl neomezenou sebedůvěru a byl přesvědčen, že všechno, co vzešlo z kalifornské půdy, je nejsilnější a největší na světě.

Protože žil v tak úrodném a žírném kraji, byl sám také spontánní, snadno se nadchl pro nové myšlenky, nové směry, snadno vzplál láskou nebo hněvem. Byl netrpělivý, neohrožený, výbušný, rád hromoval a přeháněl a měl

zálibu v drsných citových projevech, ale protože žil v prostředí romantiky a nadbytku, měl při své horkokrevné prudkosti až zženštilou citlivost pro krásu a utrpení. Byl přímý a čestný, často hlučný a drsný, proto své bližní nikdy nepodezíral a věřil, že každý člověk je poctivý, dokud se nepřesvědčil o opaku. Býval až příliš důvěřivý a lehkověrný a často se nechal napálit. Neohrožeností, houževnatostí a krutostí se podobal americkému medvědu, kterého má Kalifornie jako znak na své státní vlajce. Byl pevný ve svém přesvědčení i v přátelství, roztrpčovala ho lidská bída a nespravedlnost, byl opravdový pohan a pantheisticky uctíval boha v krásách přírody i v přírodních živlech. Byl nezkrotný optimista, věřil v lidský pokrok a byl ochoten věnovat svůj život vytváření důmyslné civilizace pro veškeré lidstvo.

Na jaře roku 1913 už byl nejlépe placený, nejznámější a nejoblíbenější spisovatel na celém světě a zaujímal místo, které na počátku století měl v literatuře Kipling. Jeho povídky a romány se překládaly v Rusku, ve Francii, v Německu, Švédsku, Norsku, Dánsku, Holandsku, do polštiny, španělštiny, italštiny a hebrejštiny. Všude byly otiskovány jeho fotografie, takže jeho mladistvou, hezkou a ostře řezanou tvář znaly a milovaly milióny lidí.

Pověsti a anekdoty o něm se rozšířily až do tatarských stepí. Všechno, co řekl, a kam se jen hnul, zaznamenávaly noviny, a když neudělal nic, o čem by stálo za to psát, reportéři si už něco vymyslili. „Pamatuji se, že v jediném dnu o mně noviny uveřejnily tři zvláštní telegramy: v prvním stálo, že jsem se v Portlandu pohádal se svou ženou, že si sbalila věci do lodního kufru a odjela parníkem do San Franciska za svou matkou. V druhém byla lživá zpráva, že mě v městečku Eureka v Kalifornii zmlátil v hospodské rvačce nějaký milionář, velkoobchodník stavebním dřívím. Ve třetím byla lživá zpráva, že jsem v horském letovisku ve státě Washington vyhrál v sázce 100 dolarů tím, že jsem ulovil v jezeře pstruha zvláštní odrůdy, jakého se dosud nikomu nepodařilo ulovit. Ale toho dne jsme se ženou pobývali v hlubokých lesích přírodní rezervace v jihozápadním Oregonu, daleko od všech dopravních spojů — silnic, železničních tratí a telegrafních i telefonních linek.“

Jack na takové novinářské kachny nikdy neodpovídal a nikdy se proti nim nebránil, ale často ho urazily a rozmrze-

ly. „Víte už o tom, že když se jedna univerzitní studentka zatoulala v Berkeleyjských kopcích a přepadl ji tam nějaký tulák, psalo se v novinách, že to asi byl Jack London?“ Ani jednou ho nepozvali do sanfranciského klubu novinářů, ale když se jeho členové usnesli, že si postaví klubovnu, požádali Jacka, aby na ni přispěl dvěma tisíci dolary, a jedi- ně tentokrát se stalo, že se škodolibou radostí odmítl žádost o peníze.

Horší než takové lživé a často pomlouvačné historky, uveřejňované o něm v novinách, byly články a brožurky tištěné s jeho podpisem jako autora. Nejvíce nesnázel mu způsobil leták s článkem „Vojenský ideál“. Stálo v něm: „Mladý muži, nejnižší cíl, jaký si můžeš v životě vytyčit, je být dobrým vojákem. ‚Dobrý voják‘ se vůbec nepokouší rozeznávat, co je správné a co není. Dostane-li rozkaz, že má střílet na své spoluobčany, na své přátele, na své sousedy, bez váhání uposlechne. Když dostane rozkaz, že má na ulici vystřelit do davu chudých, kteří se dožadují chleba, uposlechne, a když vidí šediny starců potřísněné krví a krví zbrocená řadra žen, nepocítí ani výčitky svědomí, ani soustrast. Dobrý voják je jen slepý, vražedný nástroj bez srdce a bez duše.“

Je to článek chytré koncipovaný tak, že citovým vzrušením i slovními výrazy až kupodivu napodobuje Jacka Londona. Vojenské úřady ve Spojených státech spustily pokřik, že Jack London uráží příslušníky armády. Ministerstvo pošt rozhodlo, že má být proti němu zavedeno trestní řízení pro rozšiřování těch letáků poštou. Jack prudkým protestem popřel autorství letáku a řízení bylo zastaveno, ale do smrti byl pronásledován útoky vyvolanými tou „vojenskou kachnou“.

Po celé Americe se začali objevovat jeho dvojníci v typickém sombreru, v široké kravatě a ve volném kabátě, kteří bezpochyby zavdali podnět ke spoustě novinářských klepů. Ti lidé jeho jménem přednášeli, prodávali rukopisy, o nichž tvrdili, že pocházejí z pera Jacka Londona, hlásili se do vedení revolučních vojsk v Mexiku proti Diazovi, podpisovali Jackovým jménem podvržené šeky a dokonce sváděli ženy jako živelný, ohnivý Jack London. Neustále dostával dopisy od lidí, kteří tvrdili, že se s ním seznámili někde, kde jakživ nebyl. Bavilo ho to tak dlouho, dokud se v San Francisku neobjevil jeho dvojník, který si začal milostné pletky s dámou jménem Baby. Ta posílala do Glen Ellen pohlednice s drzými

otázkami „Copak mě už nemiluješ?“ a s podpisem „Tvá milá“. Protože nebyl najisto znám jeho rodinný původ, cizí lidé se k němu hlásili jako k svému synovi, bratrovi, strýci nebo bratranci. Jedna rodina z Oswega ve státě New York šířila pověsti, že Jack London je ve skutečnosti Harry Sands, který ve čtrnácti letech utekl z domova. Noviny otiskovaly vedle sebe fotografie Harryho Sandse a Jacka Londona, aby čtenářům dokázaly, jak si ti dva jsou podobní.

Jack měl dobré kritiky a uveřejňovaly se o něm příznivé články, ale přitom se z literárních kruhů na něho často útočilo. Byl obviňován, že nepravdivě zobrazuje život na Aljašce, že píše o něčem, co vůbec nezná. Fred Thompson, s nímž se Jack vypravil k Yukonu a který zůstal na Aljašce dvacet let, musel se těm klepům smát, protože pamatoval, jak zlatokopové na Aljašce netrpělivě čekali na každou Jackovu povídku ze života v Klondiku a pokládali to, co o nich psal, za dokonale věrohodné.

Téměř ustavičně vedl spor s někým, kdo ho žaloval z plagiátorství. Už v roce 1902 byl obviněn, že jedna jeho povídka je plagiát povídky, kterou napsal Frank Norris. Když se zjistilo, že na stejný námět vydal povídku ještě někdo třetí, začala se celá věc vyšetřovat a přišlo se na to, že všem třem spisovatelům zavdala podnět k povídce táž zpráva o jisté události v Seattlu. Když vyšel román „Před Adamem“, k němuž Jacka inspirovala kniha „Příběh Abův“, její autor Stanley Waterloo vyvolal úplný skandál. Jack odpověděl přiznáním, že za svůj námět vděčí Waterloovi, ale prohlásil, že se pračlověk nemůže pokládat za soukromé vlastnictví. Spisovatel Frank Harris, známý svými výstřednostmi, z jehož článku Jack v „Železné patě“ přejal řeč, pronesenou prý londýnským biskupem, udělal si velkou reklamu tím, že dal v novinách vedle sebe otisknout svůj článek a zmíněnou pasáž z Jackova románu a dokazoval, že se London dopustil literární krádeže. Aby Jack skandál utulal, nezbyvalo mu než odpovědět: „Jsem naivní, ale nejsem plagiátor. Domníval jsem se, že to Harris ocitoval z historického dokumentu.“

Aby mu příjmy vystačily na výdaje a obrovské investice na ranč a Vlkův dům, musel donekonečna a neúnavně psát věci, po nichž byla poptávka na knižním trhu. Kdyby byl jenom na chvíli přestal, aby si oddechl, byla by se mu obrovská kupa závazků a dluhů zřítíla na hlavu. Nejlépe se prodávaly jeho aljašské povídky, a tak je psal dál a vzdy-

chal: „Tak rád bych se už jednou vyhrabal z Klondiku!“ Duševně byl čilý, nápady měl hojné a dobré, a přestože se nutil, aby psal jen to, oč je zájem, mnoho těch aljašských povídek je napsáno právě tak dobře jako jeho povídky z jižního Tichomoří, například „Mac Coyovo sémé“ a „Nepřemožitelný běloch“ z „Povídek z jižních moří“ a „Dům pýchy“ a „Šerif na Kona“ v knize „Dům pýchy“. Jenom povídačky Smoka Bellowa vyráběl pro peníze. Jeho příběhy se v něm už dávno dovolávaly, aby je zvětčil na papíře, a potřeba peněz byla jen bezprostřední vzpruhou, jíž bylo zapotřebí, aby je napsal. Od té doby, co na počátku své literární dráhy psal horkou jehlou spíchnuté články, byly povídačky Smoka Bellowa jeho první nádenická práce, literárně bezcenná, ale vydělával si jimi na cement a dříví a měď na stavbu Vlkova domu. „Netěšilo mě psát třináct povídek Smoka Bellowa, ale když jsem je psal, nešetřil jsem tím nejlepším, co ve mně je.“

Umělecká úroveň jeho povídek začínala klesat také proto, že ho už omrzely malé literární formy, které mu nedopřávaly svobodné rozvinutí děje. Chtěl psát jen romány. Dva, které tehdy vytvořil, „Jack Ječmínek“ a „Měsíční údolí“, nejen patří k jeho nejlepším dílům, ale mohou se rovnat k nejlepším americkým románům. Kromě poslední třetiny, kterou tvoří úvahy o zemědělství a z nichž měl Jack udělat zvláštní knihu, „Měsíční údolí“ nejlépe představuje to, co uzrálo v srdci a mozku Jacka Londona. Jeho postavy pradeny Saxony a povozníka Billyho jsou dokonale přesvědčivé; vyličení rvačky irských zedníků na výletě ve Weasel Parku, kde Jack jako malý chlapec po nedělních odpoledních zametal výčep, představuje klasický příklad irsko-amerického folklóru; a dramatická, tragická stávka oaklandských železničářů je i po dvaceti letech vzorem pro americké spisovatele, kteří ve svých dílech píší o stávkách.

Někdy musel Jack zoufale shánět vhodný námět pro časopisecké povídky. Když byl v takovéhle tísní, dostal jednou dopis od Sinclaira Lewise, toho nazrzlého čahouna, který na něm kdysi chtěl interview pro časopis Yalovy university a nyní nastupoval spisovatelskou dráhu. Lewis v hrubých obrysech Jackovi navrhoval několik povídkových námětů, jestli by je mohl potřebovat ... po sedmi a půl dolarech. Jack je prostudoval, vybral si „Zahradu hrůzy“ a ještě jedno téma a poslal Lewisovi šek na patnáct dolarů. Lewis odpověděl obratem pošty, poděkoval Jackovi a sdělil

mu, že mu těch patnáct dolarů zaplatilo kus zimníku do newyorského mrazivého větru.

Když Lewis později pracoval v časopise THE VOLTA REVIEW, vydávaném Americkým podpůrným spolkem pro hluchoněmé, zase Jackovi poslal třiadvacet zhruba načrtnutých námětů „s obchodně koncipovanou nabídkou a přiloženou fakturou za dodané zboží podle připojeného ceníku“ a podepsal se „Sinclair Lewis, alias Hall, alias Zrzek“. V průvodním dopise vyjádřil naději, že Jack většinu jeho námětů zužitkuje, poněvadž by mu tím umožnil, aby se zase mohl věnovat psaní „na volné noze“ a nemusel mu obětovat spánek — že „to sice je levná a osvěžující zábava, totiž spánek, ale člověk jí nesmí marnotratně plýtvat“. Jack od Lewise koupil podle „připojeného ceníku“ za dva dolary padesát námět „Dům iluzí“, po pěti dolarech náměty „Marnotratný otec“, „Vina Johna Averyho“, „Vysvětlení“, „Doporučení“, „Chrabrý gentleman“ a „Žena, která dala muži svou duši“, po sedmi dolarech padesáti „Boxer ve fraku“ a „Žalář zdravého rozumu“, za deset dolarů námět „Pan Cincinnatus“ a poslal Sinclairu Lewisovi šek na dvaapadesát dolarů padesát centů. Není známo, k čemu Lewis těch peněz použil, ale hrdě napsal Jackovi, že si může dál platit členský příspěvek v rudé, čili socialistické straně. Na tyto navržené náměty Jack napsal povídku „Když byl svět mladý“, kterou mu uveřejnil list POST, a delší novelu „Příšerná bestie“, která pak vycházela na pokračování v časopise POPULAR MAGAZINE. Když Jack Lewisovi napsal, že jeho námět „Kancelář pro vrahy“ se mu vůbec nelíbí a že si s ním neví rady, uražená hrdost Lewise ponoukla, aby Jackovi zdarma poslal podrobnější plán, jak námět zpracovat.

Nejštědřejší byl Jack vůči spisovatelům začátečníkům, kteří se na něho vrhali houfně a jejichž rukopisy se na jeho psací stůl snášely jako mračna kobylek. Neminul den, aby nedostal rukopis od člověka, který se chtěl stát spisovatelem a žádal Jacka, aby mu jeho dílo zkritizoval, opravil a prodal. Všechny rukopisy, ať to byla báseň na jednu stránku, nebo ať to byl osmisetstránkový román, či učený článek, Jack velmi pečlivě přečetl, a pak autorům posílal podrobné kritické rozbory na základě svých zkušeností, jež si za leta nashromáždil. Dával cizím lidem, co měl v sobě nejlepšího, a nešetřil přitom časem ani energií. Když se mu některá práce zdála dobrá, snažil se ji prodat nějakému

časopisu nebo nakladatelství; když ji pokládal za špatnou, nepokrytě to autorovi napsal. Často mu taková poctivá kritika vynesla jen prudké výčitky, ale vědomí, že svou úprimností si autora pravděpodobně popudí, ho nikdy neodradilo, aby mu neukázal, v čem je jeho práce špatná a jak by ji mohl zlepšit. Jednomu z nich, ačkoli ne žádal o vrácení rukopisu, poslal jej Jack zpátky s ostře odmítavou kritikou a ctižádostivý autor mu odpověděl obzvláště hanlivým dopisem. Jack probděl skoro celou noc, dopřál si jen tři hodiny spánku, ačkoli jeho mozek jej tak nutně potřeboval, a duchaplně a trpělivě mu odepsal na sedmi stránkách — za tu dobu a v tom rozsahu mohl napsat povídku, — snažil se začátečníka prostě poučit, jak má přijímat kritiku, aby se v psaní zdokonalil.

Zlobil se jenom na spisovatele, kteří ho žádali, aby jim poradil, jak by se krátkou cestou domohli literárních úspěchů. Těm Jack říkal nebo psal: „Z člověka, který se touží zdokonalit v uměleckém řemesle, ale myslí, že ho má vycepovat někdo jiný, může nanejvýš být průměrný umělec. Jestliže chcete dělat opravdu dobrou práci, musíte se vycepovat sám. Pustte se do toho! Rázně a s chutí! A nebrečte! Nepovídejte mně nebo někomu jinému, jak se vám líbí, co jste už napsal, a že to je podle vašeho mínění zrovna tak dobré, jako co napsal někdo jiný. Snažte se, aby vaše práce byla opravdu dobrá, a pak vás ani nenapadne srovnávat ji s průměrnou prací někoho jiného — na něco takového vůbec nebudete mít kdy.”

V jeho archívech jsou dopisy téměř od všech tehdejších úspěšných spisovatelů, v nichž se mu svěřují se svým nedostatkem, se svými starostmi, se svým soužením. Každému Jack projevil soustrast, každého dovedl povzbudit, každého ujistil o svých sympatiích a o svém pochopení pro jeho práci, každého nabádal, aby si věřil, aby věřil v literaturu a aby důvěřoval světu, a snažil se jej pochopit. Když některé nakladatelství vydalo knihu se sociálním námětem a poslalo Jackovi výtisk, vždycky jej poctivě přečetl a telegraficky odpověděl pochvalnými slovy, aby jich nakladatelství mohlo použít při propagaci knihy.

Stejně slušný a poctivý byl v obchodním jednání s redaktory a nakladateli. Vždycky rád jednal velkoryse a vždycky ho dopalovali ti obchodníčkové na druhé straně, že tohle nedovedou. Byl jemný, zdvořilý a dalo se s ním snadno vyjít — dokud se nepřesvědčil, že ho chce někdo ošidit

nebo že chce poškodit jeho práci. Pak se na takového člověka vrhl vztekle jako rozzuřený medvěd.

V roce 1910 mu vyšel román „Bílý Den“ a pak zadal nakladatelství Macmillan divadelní hru „Krádež“, knížku črt z jižního Tichomoří s názvem „Plavba na Snarku“ a čtyři svazky povídek, z nichž nešel žádný dobře na odbyt. Brett mu napsal, že po knihách povídek není na trhu poptávka, protože vychází záplava levných časopisů na novinovém papíře, v nichž se uveřejňují slušné napodobeniny napínavých povídek, jakými se Jack proslavil. Nakonec Brett psal že už nemůže vyhovovat jeho ustavičným žádostem o zálohy. Poté se v roce 1912 po deseti letech úspěšné spolupráce Jack s Brettem a nakladatelstvím Macmillan rozešel. Podepsal smlouvu s nakladatelstvím Century Company, které mu vydalo knihy „Povídačky Smoka Bellowa“, „Noc zrozený“ a „Příšerná bestie“, ale odmítlo poukazovat mu tři měsíce zálohu, než dokončí román „Jack Ječmínek“. Jack nebyl s nakladatelstvím Century Company spokojen a od „Jacka Ječmínka“ si po třech letech zase sliboval finanční úspěch, proto firmě Century Company poslal několik jízlivých telegramů, aby ji přiměl k rozvázání smlouvy a mohl se zas vrátit k nakladatelství Macmillan.

„Všechna nakladatelství mě ujišťují, že je možné rozvázat s Vámi smlouvu na Ječmínka“. Jediné, co Vám v tom brání, je naděje na velký zisk. Vy byste prodali sebe i dobré jméno své firmy za hřst stříbrných. Pamatujte laskavě, že nehrabu peníze a že milióny čtenářů Ječmínka si pak přečtou něco o Vás. A svět Vám to pak bude ještě dlouho zazlívát, a až zpráchnivíte v hrobě, i pak ještě bude ozvěna v mozcích těch, kdo se zatím ani nenarodili, znepokojoval Vaše zetlelé ostatky. Čekám, že se zachováte jako slušní lidé, a ne jako chamtivci..... Prošel jsem peklem, o jakém se Vám jakživo ani nesnilo, a mám trpělivost, jaké Vy nejste schopni. Bezohledně opovrhují osobním blahobytem a finančními výhodami natolik, že to Vaše zakrnělé mozky vůbec nedovedou pochopit. Já se mohu kdykoli podívat do zrcadla, a vždycky budu se svou tváří spokojenější než Vy se svou, když ji uvidíte v zrcadle.... Pozdvihnu oči a vidím v polici čtyřiatřicet knih, které jsem napsal a které mi už vyšly. V celé té řadě čtyřiatřiceti knih je jenom jedna v mizerné vazbě — „Příšerná bestie“, kterou jste nedávno vydali Vy. Tak to dopadá, když trpasličí nakladatelství vydá knihu velkého spisovatele.... Dosud očekávám odpověď na svůj

dlouhý telegram z 10. května 1913. Měli jste kolik dní čas pochutnávat si na svátečním obědě, potěšit se s manželkou a s dětmi a být roztomilí a lidští. Tak tedy buďte roztomilí a lidští i na mne a propusťte mě ze smlouvy. Víte, že jinému nakladatelství nemohu přinést nic jiného než „Ječmínka“. Vzdejte se tedy těch pár dolarů zisku a zrušte se mnou smlouvu, dokud mě docela neoberete o všechno.“ Když z nakladatelství pořád nedostává odpověď, posílá poslední zoufalý telegram: „Dovedu u každého pochopit zlost, ale lidská potměšilost je něco tak příšerně primitivního jako potouchlost jankovitého koně — jak se mohou takhle chovat lidé, kteří o sobě tvrdí, že jsou civilizovaní a pokrokoví?“

Když nakladatelství Century definitivně odmítlo vzdát se „Ječmínka“, Jack jim napsal: „Za svého života jsem utrpěl už tolik příkoří, že proti příkoří nereptám a nemám je za zlé těm, kdo mi je způsobí,“ a spolupracoval s nakladatelstvím dál, jako by se nic nestalo. Ale po vydání „Jacka Ječmínka“ se kajícíně vrátil k firmě Macmillan a víckrát ji už neopustil. Brettovi se přiznal, že bylo z jeho strany surové, když na firmě Century Company chtěl, aby s ním rozvázali smlouvu.

V létě roku 1913 pobyl s Charmianou několik šťastných týdnů v Carmelu u George Sterlinga, zaplavali si v mořském příboji a vyslunili se na písčné pláži, sbírali kalifornské ústřice, opékali si je nad ohněm z naplaveného dříví a vymýšleli spousty dalších veršů k Sterlingově žertovné básničce, která se ironií osudu z jeho veršů nejlíp uchovala v paměti:

*Někomu chutnají slepice,
ty má rád každý druhý,
já zase obědvám ústřice,
jelikož mám jen dluhy.*

Na Krásném ranči v chládku časně ráno Jack psal dál román „Vzpoura na Elsinoru“, který vycházel na pokračování v časopise COSMOPOLITAN s titulem „Námořní lupiči“. První polovina, v níž se líčí napínavý děj, je napsána dobře, obzvláště scény na moři, které Jackovi vynesly přívlastek americký Conrad; druhá polovina, v níž děj vypráví hlavní hrdina, je slabá a pokazila celou knihu natolik, že „Vzpoura na Elsinoru“ po zásluze upadla v zapomenutí.

Odpoledne Jack objížděl na koni úrodná pole, dozrávající pod prudkým sluncem, a na sklonku dne si s přáteli zaplavával

v tůni na potoce Boyes Springs. Cestou domů se zastavoval v každém výčepu na skleničku, aby se pobavil a zasmál. Navečer si zajel k Vlkovu domu za Fornim a dělníky. V srpnu roku 1913 ho téměř dokončená stavba stála už osmdesát tisíc dolarů. Noviny do něho nemilosrdně řezaly, že je odpadlík od socialismu, když si staví takový zámek, a socialisté mu zas měli za zlé, že je zradil. Pyle vypráví, že Jack mlčel jako zařezaný, když se mu někdo posmíval, že si staví nádherný palác. Reportérům Jack dokazoval, že není žádný kapitalista, i když si staví Vlkův dům, poněvadž si jej staví z peněz vydělaných vlastní prací, a když kdekdo mluvil o Vlkově domě jako o nějakém zámku, Jack odpovídal, že si jej staví z vlastního santálového dřeva a červeného pískovce, a jestli se jeho dům podobá palácům římských císařů, že mu tím nepřijde o nic drahé a je to pouhá náhoda. Když mu Harrison Fisher řekl, že bude bydlet v nejkrásnějším domě v Americe, Jack věděl, že všechny peníze a veškeré úsilí vynaložené na stavbu Vlkova domu nebyly promarněny.

18. srpna konečně nadešel den důkladného úklidu. Práce elektrotechniků skončila, tesaři a instalatéři byli také už hotovi a Forniho zedníci odklízeli hadry namočené v terpentýnu, jimiž očistili dřevěné táflování stěn. Nazítří ráno měla četa mužů začít Jacka a Charmian stěhovat do jejich nového domova. V noci předtím Forni s Jackem pracoval v domě na ranči až do jedenácti a pak se kolem Vlkova domu pěšky vracel do svého srubu. Před druhou hodinou po půlnoci ho probudil farmář, který k němu vrazil s křikem „Forni, Vlkův dům hoří! Vlkův dům hoří!“ Když Forni doběhl dolů do údolí, byl Vlkův dům už celý v plamenech.

Za pár minut přiběhl Jack, udýchaný a rozcuchaný. Zůstal stát jako přikovaný na kopečku, kde tak často sedával s italskými kameníky, zpíval s nimi a popíjel víno. Před sebou spatřil pekelnou sršící výheň — dům hořel ze všech stran. Bylo to v polovině srpna a nikde nebyla voda. Jack tam jen stál, slzy se mu řinuly po tvářích a díval se, jak se mu hroutí jeden z největších snů jeho života.

Hořela každá část ze dřeva, i z okenních rámců šlehalo nepřírozeně modré plameny. Za okruhem santálových stromů, které obklopovaly dům, ležely na hromadě mořené santálové desky, jimiž měly být obloženy stěny v Jackově ložnici. Santálové stromy nechytily, ale ta hromada za nimi byla v jednom ohni. Jack dostával dopisy, většinou anonymní, které obviňovaly mnoho lidí, že požár založili.

Byl obviněn Shepard, s nímž se Eliza rozváděla, protože se v den, kdy požár vypukl, Shepard a Jack pohádali. Svádělo se to na dělníka, kterého Jack vyhodil z ranče, protože bil svou ženu, a kterého lidé viděli, jak se potlouká v okolí domu. Svádělo se to na zlostného dílvedoucího. Svádělo se to na Forniho, svádělo se to na nepřející socialisty, svádělo se to na rozvzteklé tuláky. Forni byl přesvědčen, že požár vznikl samovznícením hadrů napuštěných terpentýnem, jimiž se čistilo dřevěné táfování stěn. Ale tím by se nedalo vysvětlit, že dům začal hořet současně ze všech stran. Kdyby oheň vznikl v některé místnosti, nemohl se přece šířit dál skrze kamenné zdi. Kdyby byl zapjat proud, mohlo snad vadné elektrické vedení zavinit požár ve všech prostorech domu najednou ... jenže elektrické vedení přece nebylo protaženo až ke hromadě desek za hradbou santálových stromů, které dům obklopují kolem dokola...

Jack ovšem věřil, že požár byl založen, ne-li rukou lidskou, tedy rukou osudu — že mu osud nepřál, aby se těšil z plodů své práce, a nechtěl dopustit, aby socialista bydlil v paláci. Za tu dlouhou, zlou noc Jack promluvil jen dvakrát. Když požár vyvrcholil, Jack řekl: „Nechtěl bych být tím člověkem, který můj dům zapálil.“ Když na úsvitu zbyla z domu jen skořápka vnějších zdí, které měly přetrvat staletí, řekl klidně: „Forni, zítra začneme stavět znovu.“

Ale nikdy nezačal znovu stavět Vlkův dům. Té noci shořelo něco v jeho srdci a zbyla po tom jen vyprahlá poušť.

X

Čtyři dny proležel na verandě nad tropickou zahradou. Přepadly ho záchvaty všech nemocí, které doposud měl, jak v mládí „na trati“ a v Klondiku, tak i v Koreji a na Šalomounových ostrovech, jako by ho měly všechny vespolek udolat. Byl přesvědčen, že Vlkův dům podpálil někdo z okruhu jeho známých, a náhle se ho zmocnila nechuť k životu, kterou musel přemáhat. Že jeho dům je v troskách, to ho ani tolik nezdrtilo jako ztráta víry v lidi, neboť láska k lidem byla neodlučným rysem jeho povahy a doposud nikdy ani na chvíli nepřestal v lidi věřit. Najednou se mu oči otevřely a viděl mnoho, co předtím neviděl, nebo když to viděl, pominul to jako něco bezvýznamného. Zničení Vlkova domu požárem připadalo mu jako předzvěst, že stejně propadne zkáze všechno, co se snažil vykonat pro socialismus a literaturu. Za ty čtyři dny hodně zestárl.

Když mu bylo líp a mohl vstát z postele, ihned si na Washoe Banu přes louky zajel k Vlkovu domu. Smutně se zahleděl na mohutnou kostru z červeného pískovce, z níž k modré sonomské obloze trčely holé věže, a pojmenoval ji Trosky. Mohl vyhlásit úpadek, ale neudělal to a zaplatil všechny účty za stavbu až do posledního. Sedmdesát tisíc dolarů přišlo úplně nazmar a ke všemu ještě promarnil čas a energii psaním povídek Smoka Bellowa... i to ho přimělo k úvahám, zda by si ze zkázy Vlkova domu neměl vzít mravní naučení. Spočítal si, že má sto tisíc dolarů dluhů: to vědomí ho ani tolik netížilo, ale pomyšlení, kolik musí vykonat tvůrčí práce, než si vydělá tolik peněz, zatěžovalo mu mozek jako kámen.

Pořád říkal Fornimu a Elize, že si Vlkův dům postaví znovu: Fornimu přikázal, že z troskek zdí musí být vyklizen všechen rum, a Eliza měla dát pokácet santálové stromy, aby dřevo vyschlo, než se započne se stavbou, ale v hloubi duše se mu do ní nechtělo... dům by asi zas vyhořel. Když dostal z časopisu *COSMOPOLITAN* před výplatní lhůtou pravidelnou měsíční zálohu dva tisíce dolarů — bylo to přátelské gesto — dal si ke své přeplněné pracovně vystavět přístavek v chládku pod rozložitým dubem a přestěhoval si tam z pracovní psací stůl se stahovacím poklopem, drátěné lisky,

vrchovatě plné dopisů a listin, ocelové registratury s pracovními záznamy, lístkové katalogy s poznámkami a náměty pro stovky povídek, zásoby papíru a psacích potřeb. A tam pracoval poslední tři roky svého života.

Znovu se vrátil k dřívějšímu dennímu rozvrhu, všechno bylo stejné, jako to vždycky bývalo, a přece se všechno zdálo jiné. Když se na koni projížděl po ranči, začínal si už všímat, že lidé práci odbývají, že se za svou mzdu opravdu nijak nenadřou. Opatrnými občasnými dotazy zjistil, že ranč pokládají za libůstku podivínského zbohatlíka, kterou není třeba nikterak brát vážně, stejně jako dělníci na stavbě SNARKU nebrali svou práci vážně. I řemeslníkům bylo lhostejné, zda se jim práce daří nebo ne: jednou Jack sesedl s Washoe Bana před kovárnou, a když si prohlédl čerstvě okovaného koně, viděl, že podkovář uřízl koni kousek kopyta, aby mu podkova správně přiléhala. Prostudoval si účty za zboží objednané pro ranč a zdály se mu vysoké, zajel si tedy do města na poradu s obchodníky. Dověděl se od nich, že jeho dílovedoucí žádají dvacet procent provize z každého dolaru za koupené zboží, která se pak samozřejmě musí započítat do účtovaných cen.

V roce 1910 psal Jack Anně Strunské: „Odsuzuji-li povahové vady svých přátel, nemusí to ještě být důvod, proč bych je neměl mít rád.“ Lidumilnost, snášenlivost a štedrost byly neodlučné rysy jeho povahy, ale bylo čím dál tím těžší si je uchovat. Jack požádal svého přítele Ernesta, který žil v Oaklandu, aby mu koupil dva páry těžkých tažných koní. Ernest si započítal provizi a ještě si zaúčtoval své osobní výlohy a pak Jackovi nákladním vlakem poslal pár nemocných koní a druhý pár, který neměl udanou váhu. Když Jack Ernestovi napsal, že se mu takové koně nehodí, Ernest mu odpověděl zlostným, urážlivým dopisem. Jack mu odepsal: „Blekotáš mi o tom, že jsem ranil tvé city, a co mám říkat já? Jsem tak smělý a opovažuji se ti vytknout, že jeden pár koní vážil jen třináct set padesát liber místo patnáct set liber, jak udáváš na účtě, a druhí dva koně byli tak nemocní a zedření, že nejsou vůbec k ničemu, a ty hned vyletíš a křičíš, že tě podezírám z podvodu. Jsou to vyhozené peníze, ale moje peníze, a kde mám honem vzít jiné? Že ti je to líto? A mně nemá být líto, že jsem přišel o pár set dolarů? Měl jsem ty peníze na koně, které nutně potřebuji na ranči, protože ty, které tu mám, na všechnu práci nestačí.“

V roce 1904 byl novinář Noel, Jackův přítel, bez práce a Jack mu postoupil právo na zdramatizování „Mořského vlka“ s tím, že Noelovi budou patřit dvě třetiny z tantiém, kdyby se kus hrál. Ale Noel prodal autorské právo na dramatizaci někomu jinému za 3500 dolarů a nechal si je celé pro sebe. Když Jack vyjednával s Hobartem Bosworthem o zfilmování „Mořského vlka“, musel prosit o zálohy v nakladatelstvích, aby autorské právo na zdramatizování mohl odkoupit. A nyní na něm Noel zas chtěl, aby investoval peníze do Millergraph Company, do firmy, kterou Noel zakládal a která měla dát na trh zlepšený postup litografické reprodukce. Jack si umínil, že se svým novým sklonem k cynickému názoru na lidi nesmí nechat svést k tvrdosti, a tak dal Brettovi příkaz, aby Noelovi poukázal tisíc dolarů, a když firma Millergraph Company znovu potřebovala peníze, Jack opět zatížil Flořin dům hypotekární výpůjčkou ve výši čtyř tisíc dolarů a napsal Noelovi: „Já hraji s otevřenými kartami a mám k svým přátelům absolutní důvěru.“ Ale akcie firmy, které měl dostat, byly vydány podvodně a firma udělala bankrot.

Charmian mu řekla, že ihned potřebuje 300 dolarů, a Jack písemně upomenul stovky mužů a žen, kterým půjčil peníze — ti lidé mu dlužili dohromady přes padesát tisíc dolarů — a kteří ho vždycky ubezpečovali, že mu půjčené peníze vrátí do posledního centu. Podařilo se mu takto sehnat jen 50 dolarů. Poprvé v životě ho napadlo, že je svým přátelům možná pro smích. Nepokládají ho snad odedávna za potrhlého irského divocha, který rozhazuje peníze jako opilý námořník? Půjčování peněz bylo vždycky jednostranné: on pořád jen dával a dával, a druhí pořád jen brali a brali... Dřívější záchvaty malomyslnosti ho přepadaly samočinně, bývaly občasné a zase ho brzy přešly, ale nyní byly jeho myšlenky čím dál chmurnější a zatrpklejší jako tmavý čajový výluh.

Kolik let už naléhavě žádal Bessii, aby mu na letní prázdniny přivezla obě dcerušky do Glen Ellen, aby si zamilovaly jeho Krásný ranč. Jen jednou přijala Bessie jeho pozvání: přijela k němu s holčičkami a s několika přáteli na výlet. Ale sotva se začínal podávat oběd venku na terase, přihnala se cvalem na koni Charmian v červené čapce a v červené blůze a rozvířený prach se usadil na mísách s jídlem a talířích. Jack Bessii horlivě ujišťoval, že kdyby svolila, aby jí na ranči dal vystavět domek, určitě by to

zařídil tak, aby s Charmianou nepřicházela do styku. Bessie to odmítla. Charmian ji už připravila o manžela, a tak se bála, že by ji možná připravila i o dcerušky. Řekla Jackovi, že podle jejího názoru druhá paní Londonová nemůže dávat dobrý mravní příklad jejím dorůstajícím dcerkám.

Jack se snažil, aby si naklonil Joanu, které už bylo třináct, ale nepodařilo se mu to. Doufal, že by v Joaně mohl mít kamarádku a přítelkyni. 24. srpna, čtyři dny po vyhoření Vlkova domu, jí prosebně píše, aby nezapomínala, že je její otec, že ji živí a šatí, že se stará, aby měla domov, že ji miluje od chvíle, kdy přišla na svět, a ptá se jí: „Máš pro mne vůbec nějaký cit? Nebo jsem jen hlupák a blázen, který pořád jen dává a nedostává na oplátku nic? Posílám ti dopisy a telegramy, a ty mi neodpovíš ani slovem. Snad si myslíš, že by to bylo pro tebe ponižující, kdybys mě brala na vědomí ještě jinak než jen jako živitele? Máš mě vůbec ráda? Co pro tebe znamenám? Rozstůnu se — a ty se vůbec neozveš. Domov mi zničí požár — a ty mě nepotěšíš ani slovem. Svět nepatří těm, kdo nedovedou projevit lidskou účast, kteří svým mlčením lžou a podvádějí, kterým je otcovská láska pro smích, pro které je otec jenom někdo, kdo jim poskytuje živobytí. Nemyslíš, že je na čase, aby ses už konečně ozvala? Nebo chceš, aby mě jednou provždy omrzelo ucházet se o to, abys mi občas napsala?“

Když se začal na svět dívat otevřenýma očima, bylo pro něho nejkřutější ránou vědomí, že Charmian je ve svých třiačtyřiceti letech pořád ještě dítě s dětinskými zájmy. Jejich sousedé vyprávějí, že „lidem donekonečna vykládala o malicherných věcech, třeba se jim chlubila svými šperky, starodávnými kostýmy, parádními čepečky... Chtěla věčně uplatňovat své svůdné ženské půvaby“. Jack zakoušel úplná muka, když viděl, jak se jejich hosté snaží utajit rozpaky nad tím, že se Charmian před nimi staví do divadelních póz, že si před nimi hraje na upejpavou mladou krásavici, za kterou se věčně považuje, že nosí plno šperků, červené staromódní kostýmy a parádní nadrchané čepečky, jaké se nosily v minulém století. Charmianina nevlastní sestra vypráví, že když byla Charmian malá, každou chvíli na někoho za úkrytu za rohem vystrčila hlavu, ušklíbala se a rozkřikla — čekala, že ji ten druhý bude honit. Tohle vlastně dělala pořád: každou chvíli někoho překvapila nějakou prostořekou poznámkou a jako malá uličnice

čekala, že ji napadený bude honit. Jednou večer Jack seděl s Elizou u psacího stolu v jídelně na ranči a lámali si hlavu, jak sehnat peníze, aby mohli dostát svým závazkům — Charmian k nim znenadání vrazila s celou štůčkou sametu, jež si ovinula kolem sebe, vychloubačně jako páv začala před nimi chodit sem tam a ptala se: „Tak co, muži, vid, že v tom budu vypadat nádherně? Koupila jsem si toho dvě štůčky.“ Když zas odešla, rozesmutnělý Jack dlouho mlčel a pak řekl Elize docela klidně: „Charmian je pořád jako malé dítě. Musíme na ni dát dobrý pozor.“

Škoda, že si Jack nemohl zase vyjet do jižního Tichomoří nebo na výlet se čtyřspřežím, že neměl chuť vypravit se na nějakou dobrodružnou cestu — Charmian by mu zase byla ideální družkou. Ale Jack žil nyní doma, byl omrzelý a rozčarovaný, potřeboval rozšafnou ženu, která by mu „ve světě rozšafných lidí stála věrně po boku“. Potřeboval ženu, která by s ním sdílela jeho široké lože, kterou by mohl vzít za ruku, když se znepokojen starostmi v noci probudí ze spánku.

Měl kolem sebe přátele a příbuzné, v celém západním světě měl statisíce ctitelů, ale cítil se nevýslovně osamělý. Bolestně toužil, jak může jen člověk, jehož život se schyluje k smrti, bolestně toužit po vlastním synu, z vlastního masa a krve, jemuž by mohl plně důvěřovat, v němž by v stáří měl silnou a spolehlivou oporu, který by byl dědicem jeho jména a odkazu.

Přestože mu vyhořel dům a dlouhá letní sucha mu zničila úrodu, byl rok 1913 pro něho velmi plodný: v tom roce dospěl na vrchol své spisovatelské dráhy. Ve čtyřech časopisech vycházely na pokračování jeho romány, například „Šarlatový mor“, v němž vylíčil, jak se lidstvo navrátilo zpět k primitivnímu způsobu života, když mor vyhubil civilizaci. V tom roce mu vyšly knihy „Nocí zrozený“, kde jsou napínavé povídky, například „Mexikánec“, „Zabít člověka“ a „Když svět byl mladý“, „Příšerná bestie“, delší novela z boxerského prostředí na námět, jež mu dodal Sinclair Lewis, a za dva měsíce po sobě dva romány, „Jack Ječmínek“ a „Měsíční údolí“. Po tak velkých pracovních úspěších vyvolal v nakladatelských kruzích dojem, že není jen člověk, že je prostě živelná tvůrčí síla.

Osud mu dovedl zasazovat drtivé rány, ale přece mu byl někdy příznivě nakloněn. Koncem roku dopsal Jack román „Vzpouza na Elsinoru“, jímž se velmi vyčerpal, a potřeboval

nový nápad, aby se mohl s oživenou silou vrhnout do nové práce. A tu byl ze San Quentinu propuštěn jeho přítel Ed Morrell, který tam byl pět let vězněn v samovazbě, načež ho ze svěrací kazajky a z tmavé díry vysvobodili a udělali z něho dozorce nad chodbaři. Jack mnoho let usiloval, aby Morrellovi byl trest prominut, a když se mu to konečně podařilo, poslal Morrellovi telegram: „Gratuluji a vítám tě domů.“ Dali si schůzku v oaklandské restauraci U SKALNÍHO SEDLA a zpečetili tam přátelství, které navázali a doposud pěstovali jen písemně, jak tomu bylo s mnoha lidmi, s nimiž se Jack přátelil. Morrell pak hodně pobýval na Krásném ranči a ukájel Jackův nenasytný zájem o kriminologii a penologii, o nichž s takovým pochopením psal profesor Chaney, ještě než se Jack narodil. A zanedlouho se Jack zabral do svého osmého a posledního velkého románu „Tulák po hvězdách“, mohutně působivého tam, kde líčí utrpení trestanců sešněrovaných ve svěracích kazajkách, kde jemně a citlivě líčí přátelské vztahy vězňů v dusných žalářních celách, a směle fantastického tam, kde v představách zalétá nazpátek do říší uplynulých věků. Poutavým líčením smrti, napínavým dějem a melodicky lyrickými pasážemi je román „Tulák po hvězdách“ skvělé literární dílo.

Ta práce mu prospěla jako očištná lázeň: psaní ho tak těšilo, že zapomínal na své duševní a tělesné neduhy. Stejně jako kdysi v Piedmontu mu působilo radost, když svému hostu mohl přechíst každou novou dokončenou kapitolu. Mladíkovi, který ho žádal o pár slov pro potěchu, Jack odpsal: „Vím z vlastní zkušenosti, co to je omrzelost životem u šestnáctiletého a dvacetiletého a jak blazeovaně a zoufale se může člověk nudit v pětadvaceti a třiceti letech. A přece žiji dál, tloustnu a dovedu se celé dny smát.“ Morrell Jacka v tom období líčil takto: „Ať říkal a dělal, co chtěl, člověk ho musel mít rád, protože byl neskonale laskavý. Dovedl každému říkat do očí nejbezohlednější a nejdrzejší věci, dovedl urážet jeho city, a člověk si to rád nechal líbit, protože to nikdy nebylo zahroceno osobně. Byl to snad nejmilejší a nejhodnější přítel, jakého jsem v životě poznal.“

Poněvadž se jeho obchodní styky s nakladatelskými kruhy velmi úspěšně rozvíjely, musel čím dál tím více času věnovat podpoře a ochraně svých autorských práv. Uzavřel s hercem Hobartem Bosworthem smlouvu, že mu postoupí určitý podíl z honorářů za zfilmování svých románů a povídek.

Jakmile se dal Bosworth do práce, hned se začaly jiné filmové společnosti pirátsky zmocňovat Jackových literárních děl a točily podle nich filmy například film „Mořský vlk“ byl ve dvou verzích promítán současně ve dvou kinech naproti sobě v téže ulici. Tehdy ještě nebyl jasný zákon o autorském právu a soud několikrát rozhodl proti autorovi, který se najednou dověděl, že když časopisu zadá právo vydávat jeho dílo na pokračování, časopis tím automaticky získává veškerá práva na dílo. Jack se tedy dověděl, že když některé jeho dílo poprvé vyjde na pokračování v časopise, náleží pak už tomu časopisu, a ne jemu, a že filmové společnosti získávají právo ke zfilmování jeho prací za směšně nízké ceny.

Spojil se s Arthurem Trainem a s nedávno založeným Svazem spisovatelů v boji za revizi zákona o autorském právu v tom smyslu, aby autorovi, který prodá svou literární práci časopisu, zůstalo zachováno a bylo chráněno jeho právo dál disponovat uveřejněným literárním dílem. Do tohoto boje, který trval řadu let, vrhl se Jack vší svou energií a věnoval na něj vlastní prostředky, jezdil do New Yorku a Hollywoodu, platil advokáty, vystupoval před soudem, rozesílal stovky plamenných dopisů a telegramů. Věnoval tomu dlouhému a svízelnému boji spoustu času, možná na úkor nových literárních děl, která snad mohl vytvořit, ale přispěl příštím generacím amerických spisovatelů, aby jim byl zabezpečen celý výtěžek z jejich práce.

V květnu roku 1914, brzy po dokončení románu „Tulák po hvězdách“, rozhodla se vláda Spojených států energicky potlačit vzpoury v Mexiku, vedené Villou a Carranzou, a vyslala válečné lodi s vojskem, které mělo obsadit Vera Cruz. Od roku 1904, kdy bylo Jackovi v rusko-japonské válce zabráněno rozvinout reportérskou činnost, těšil se na den, kdy se mu naskytne příležitost, aby se mohl rehabilitovat. Když mu časopis COLLIER'S nabídl jedenáct set dolarů týdně a mimo to úhradu všech výdajů, netrvalo ani čtyřiaadvacet hodin a Jack už byl na cestě do Galvestonu, odkud odplul do mexického přístavu Vera Cruz.

Ale zase nemohl rozvinout činnost válečného zpravodaje... tentokrát proto, že k válce vůbec nedošlo. Spojené státy neměly v úmyslu dobýt Mexika a zřídit v něm svůj protektorát, spokojily se jen výhružnou demonstrací svých vojenských sil před Vera Cruzem. Jack zuřivě vyklepával na stroji články o „Moru v přístavě“ a o „Mexické armádě“,

líčil, jak vojáci Spojených států bojují ve Vera Cruzu s morovou nákazou a revolucionáři v Tampien proti cizím petrolejářským společnostem. Téměř tři měsíce podával zprávy z revolučních bojů, ale nakonec si z Mexika odnesl tvrdošjnou úplavici, vzpomínku na to, jak při jediné hře v karty obehrál reportéry i francouzského a španělského velvyslance, a materiál pro sérii povídek z Mexika, který ho velmi zaujal. A když o ně projevila zájem redakce listu *COSMOPOLITAN*, začal si k povídkám ihned dělat poznámky a kompoziční náčrtky.

Vrátil se do Glen Ellen schvácený úplavicí, bledý a zesláblý. Aby se zotavil a znovu nabral sil, vypravil se na *ROAMERU* na několikatydenní plavbu po sanfranciském zálivu. Zakoušel velké bolesti a zotavoval se jen pozvolna. Když si to redakce *COSMOPOLITANU* rozmyslila a ztratila zájem o připravovanou sérii povídek, protože američtí čtenáři prý mají až po krk událostí v Mexiku, Jack materiál k povídkám odložil a nenapsal pak už ani slovo. V dobách, kdy ještě býval bojovný, snad by mexické povídky napsal a časopisy by je byly s radostí uveřejnily. Kdyby se všechny vyrovnaly té jediné, kterou napsal, s názvem „Mexikánec“, pak připravil sebe i celý svět o skvělou knihu.

Nemoci ho sužovaly čím dál trvaleji; to, co Cloudesley Johns nazval „období duševní deprese, kdy málem ztrácel chuť do života“, opakovalo se častěji a cyklické střídání záchvatů se zrychlovalo. Jackovi bylo čím dál tím víc zatěžko dostat ze sebe tisíc slov denně... ale na podzim roku 1914 oznámil nakladatelství, že se pustil do nového románu, který bude nejsilnější a nejúžasnější ze všeho, co napsal... „z prostředí, o němž doposud, co existuje na světě literatura, ještě nikdo si netroufal psát, natož něco otisknout. Bude to román o složitých milostných vztazích mezi třemi lidmi, s úchvatným dějem. Když o tom románu přemýšlím, jsem téměř přesvědčen, že jsem se k němu dopracovával vším, co jsem v životě napsal. Bude to něco naprosto nového, naprosto jiného než všechno ostatní, co jsem vytvořil.“

S takovým zřejmě opravdovým přesvědčením a nadšením — ale možná že se unavený a zoufalý pokoušel takto jen vybičovat svůj vlastní zájem o práci i zájem nakladatelství — pustil se do románu na námět „návrat k půdě“, s titulem „Malá dáma z velkého domu“. Pohnutkou k napsání románu byly zřejmě jeho nápady, jak by měl vypadat vzorný ranč a jak by se mělo zreformovat kalifornské země-

dělství, ale nakonec z toho byl sentimentální román o lásce v trojúhelníku, přetížený květnatým nabubřelým slohem devatenáctého století, něco tak vyumělkovaného, přepjatého a nepřirozeného, až čtenář žasne, že to mohl napsat Jack London.

Teprve před několika měsíci dokončil Jack „Tuláka po hvězdách“, pak ještě napsal znamenité „Povídky o uslintaných pacientech“ z prostředí blázince sousedícího s Hillovým rančem a „Jižně od předělu“, silnou a přesvědčivou novelu z proletářského života. Jeho sebedůvěra, schopnost soustředění a kázeň se nevyčerpala, tvůrčí chuť do práce se nevyčerpala, ale výkonný motor, jímž býval mozek Jacka Londona, který za čtrnáct let zplodil jednačtyřicet knih, začínala už zmáhat únava a opouštět síla.

Před rokem ho Joan bolestně zranila, ale pokusil se ještě jednou získat si její náklonnost. Joan byla první rok na vyšší střední škole a poslala mu divadelní hru, kterou napsala. Jackovi hra způsobila takovou radost, jako by ji byl napsal sám. „Ohromně se mi líbila, nemohu ani uvěřit, že jsem otec dívky, která už je tak velká a dovede napsat takovou divadelní hru.“ Několik příštích měsíců je v jeho obchodních i soukromých dopisech hrdá zmínka, že má dceru, která už studuje na vyšší střední škole.

Napřed si všechno dobře promyslel a pak pokorně navštívil Bessii v jejím domě v Piedmontu a předložil jí svůj návrh. Když dovolí, aby k němu děti jezdily na ranč a dobře otce poznaly, aby se s ním na koni projížděly po ranči a zamilovaly si tamější život, změnil svou závěť, již všechno odkázal Charmianě, a ranč odkáže svým dvěma dcerám. Někde v chráněném místě na ranči postaví pro Bessii dům, aby tam mohla žít s dětmi. A mohla by ho s dětmi navštěvovat kdykoli, tak se aspoň přesvědčí, že ji Charmian nechá na pokoji. Sliboval, že udělá všechno, oč ho Bessie požádá, všechno, jen když mu dopřeje, aby zas měl u sebe své dvě dcerušky. Bessie se nenechala zlákat.

Za několik dní napsal přímo Joaně: „Já vím, Joan, že to je v tvém věku těžké rozhodnutí přijmout nebo zamítnout návrh, o němž jsem ti psal v neděli večer, a obávám se, že se rozhodneš chybně — že ti bude milejší zůstat nepatrnou osůbkou v malém světě. Rozhodneš se pro to, poněvadž dopřáváš sluchu jen své matce, která také je nepatrná osůbka

v docela malém ohraničeném světě a která by své ženské žárlivosti na jinou ženu obětovala i svou budoucnost. Já ti nabízím velké věci tohoto světa, velké věci, v něž věří velcí lidé, kteří je znají, kteří mají velké myšlenky a konají velké činy.“

Následovalo ještě mnoho úzkostně prosebných dopisů. Joan dlouho neodpovídala. Konečně mu na jeho naléhavé prosby odepsala dopisem na jedinou stránku, že je se svým prostředím doma dokonale spokojena, že si je nepřeje změnit, že vždycky zůstane u maminky a že neuznává jeho smýšlení o mamince, kterou miluje a která je na ni hodná. Prosila ho, aby ji už nechal na pokoji, aby tohle už byl poslední dopis, ježž ji přiměl napsat — znamenalo to, že mu dává sbohem.

Když se ho Charmian pokoušela přimět, aby vyhnal z ranče „tulácké filosofy“, kteří se tam neustále povalují, Jack proti tomu protestoval z hloubi duše: „Rozhovor se Strawn-Hamiltonem mě baví neskonalé víc než s línými italskými nádeníky. Strawn-Hamilton se mi jako host vyplácí, ale o těch nádenících bych to jakživ nemohl říci. Buď tak laskava a nezapomínej, že ranč je moje starost. Různí lidé, kteří na něm pracovali a pracují, mě stáli tisíckrát víc zbytečně vyhozených peněz, než pár jídel a noclehů, které jsem poskytl zdarma svým kamarádům. Takové mauličkosti, které mají nepatrnou cenu, jim dávám ze srdce rád. Jinak se mé srdce už nedovede moc rozehřát vůči mým bližním. Nemám tedy mít srdce ani pro tyhle?“

Charmian v poslední době bývala střídavě nevrlá a náládová, pletla se Jackovi do řízení hospodářství na ranči, nakažovala mu, které stromy smí a které nesmí vykácet, zdržovala lidi od práce nářky, že trpí nespavostí a celé noci ani oko nezamhouří, a dělníkům, kteří přicházeli do práce v sedm hodin ráno, zakazovala, že se nesmějí přiblížit k domu před devátou, aby ji nebudili. Když Jack tvrdil, že nemohou nechat práci stát, sebrala si ložní přikrývky a šla se vyspat do stodoly. Jack musel ustoupit a nařídil dělníkům, aby se nepřibližovali k domu, i kdyby neměli nikde jinde nic na práci... až jednou v pět hodin ráno, když se na koni projížděl v lukách, přistihl Charmian v kupě sena s mladíkem, který byl u nich hostem, jak se dívají na východ slunce.

Kdysi své první ženě Bessii vytýkal, že se nedovede oblékat, že není dobrá hostitelka a že je žárlivá. Řízením osudu

ho pak Charmian dopalovala týmiž nectnostmi. Ani se nesnažila být příjemnou hostitelkou a dobře vést dům — o všechno se starali japonští sluhové a Charmian si počínala, jako by byla doma hostem. Když někdo přijel na návštěvu, musel mu jeho pokoj ukázat Jack nebo Nakata; jedna žena dosvědčuje, jak Jacka přivádělo do rozpaků, že se Charmian o nové hosty vůbec nestará, a jak musel i ženám, které byly u nich prvně, ukazovat, kde je dámská toaleta. Bessie si žen moc nevěšmala, pokud se Jackovi nevěšely na krk, ale Charmian se ani netajila žárlivostí na kdejakou ženu. Jack směl málokdy někam bez ní, a když byli spolu někde ve společnosti, vždycky se postarala, aby se společnost co nejdříve rozešla. S jinou ženou směl promluvit jen pět minut, i když spolu třeba debatovali o příštích volbách — jakmile uplynulo pět minut, spustila na ně Charmian proud výřečnosti, ačkoli jí vůbec neodpovídali.

Jednou tajemník Byrne telegrafoval Jackovi do Los Angeles a připojil sdělení, že by se s ním ráda setkala žena, s jejíž rodinou byl Jack už mnoho let v přátelských stycích. Charmian Byrnovi nakázala, aby z telegramu vzkaz vyškrtl, protože chce Jackovi psát a oznámí mu to sama. Ale nakonec to Jackovi vůbec nesdělila. Raději by se byla udělala k smrti, než by Jackovi dovolila, aby zaměstnával sekretářku. „Já k tomu nikoho nepustím,“ říkala, „chci mít sama všechno v rukou.“ Teprve když Johnnymu Millerovi zemřela matka a její druhý muž Byrne byl bez práce, směl si Jack vzít sekretáře na plný úvazek, ačkoli ho dávno potřeboval.

Charmian jednou dostala z New Yorku telegrafickou zprávu, že „Jack je neustále pohromadě s ženou, která bydlí v hotelu Van Cortland v Čtyřicáté osmé ulici. Amy.“ Nešťastný a nespokojený Jack vskutku měl občas milostné pletky s jinou ženou. Před lety psal Charmianě: „Musím se ti přiznat k jednomu malému dobrodružství, které je dokladem, jak snadno se někdy nechám strhnout svými smysly.“ Ale zdá se, že milostná dobrodružství byla spíše následkem zborcení manželských svazků než dokladem vrozené prostopášnosti. Jack byl věrný Bessii, dokud se jejich tělesný manželský svazek znenadání nepřerval. Devět let byl věrný Charmianě, dokud jejich duchovní manželský svazek neztroskotal.

Jack sice už předtím někdy pil, aby zdolal občasné zachvaty deprese, ale jinak pil většinou jen tehdy, když

nechtěl kamarádům kazit zábavu a když si chtěl pitím ulevit. Nyní začal pít hodně, ale ne pro zábavu, nýbrž aby otupil bolest. Předtím pil málokdy doma na ranči, ale nyní tam pil téměř pořád. Zapřahal si koně do kočárku a jezdil do Santa Rosa nikoli na jedno odpoledne v týdnu, ale třikrát i čtyřikrát za týden. Ira Pyle vzpomíná, že se už s lidmi nepřel pro potěšení — nyní se při tom vztekal, bušil pěstí do nálevního pultu a otevřeně projevoval opovržení těm, kdo nedebatovali logicky, ale jen aby hájili své osobní zájmy. V mládí se při divokých pitkách s pirátskými lovci ústřic opíjel, ale později vždycky věděl, kdy už má dost a kdy má pít nechat. Ještě před rokem, když se na s. s. Dr-rigo vracel kolem Hornova mysu z obchodní cesty po městech na východě, dal si v Baltimoru naložit na loď tisíc knih a brožur, které chtěl po cestě prostudovat, a čtyřicet soudků whisky. „Až v Seattlu přistaneme, buď z toho tisíce knih nezůstane ani jedna nepřečtená, nebo z těch čtyřiceti soudků nezůstane ani v jednom kapka whisky.“ Když loď opouštěl, měl v každé z toho tisíce knih načrtané poznámky a soudky whisky byly úplně nedotčené. Ale to se všechno nyní změnilo: musel mít whisky, aby zabil dlouhou chvíli, aby mu byla snesitelná. Neduhy ho doháněly k pití a pitím si je zhoršoval. Duševní únava a skličenosť ho doháněla k pití, ale pít ho ještě víc unavovalo a skličovalo. Nebyl už zdrav, nebyl už mladý ani šťastný, těžce se mu pracovalo, nesnesl už ani čtvrtku whisky za den. Dříve ho lidé vídali pít — nyní ho vídali, jak se opíjí.

A dožíval se čím dál tím většího zklamání v přátelích a v těch, s nimiž byl v obchodním styku. Dvěma přátelům u něho zachutnala hroznová šťáva vylišená z jeho hroznů, a tak mu navrhli, aby společně založili firmu, která ji bude vyrábět i prodávat. Oni dva do toho vloží peníze a Jack dá své jméno a hrozny. Zanedlouho dostal předvolání k soudu, protože ti dva ho žalovali, že jim dluží jednatřicet dolarů. Když za tři tisíce pět set odkoupil zpátky právo na dramatizaci „Mořského vlka“, aby filmovým společenstvem mohl zadat právo na zfilmování svých nejlepších povídek, producenti mu sdělili, že na zfilmovaných povídkách nic nevydělali a nemohou mu tedy vyplatit podíl ze zisku. Koupil si polovinu akcií dolu na zlato v Arizoně, ale jakživ se nedověděl, kde ten zlatý důl vlastně je; koupil balík akcií nově založené oaklandské Úvěrní a hypoteční společnosti a měl z toho dva roky neustálé

tahanice před soudem. Připadal si pořád jako „kavka, blá hrací známka, loterní lístek“ a bývalo mu to líto.

Nejtrpčí ranou bylo pobouření, které vyvolali mezi sousedy Ninetta a Edward Paynovi, ačkoli jim doposud připácel na živobytí — chtěli na sousedech, aby se podepsali na podání k soudu, jímž vymáhali, aby bylo Jackovi zakázáno čerpat vodu z tůně nad druhou hrází, kterou dal sám postavit na svém pozemku pro zadržení dešťové vody. Svůj požadavek odůvodňovali tím, že by se odváděla voda z potoka v sousedství jejich domu. Samozřejmě jen málo sousedů se nechalo přimět k podepsání a zastražit možností, že by přišli o vodu, ale Ninetta a Edward Paynovi dosáhli svého a vymohli si zákaz, že Jack nesmí vodu odčerpávat.

Slyšel o tom, jak prý jeho přátelé, kteří z něho ustavičně tahají peníze, vykládají, že je vydělává náramně snadno a že by byli hloupí, kdyby mu je nepomohli utrácet. O Georgu Sterlingovi — jemuž nedávno poslal sto dolarů za úplně nepotřebný námět k povídce, protože Sterling byl na mizině — se Jack dověděl, že ho pomlouvá, že prý píše za „Hearstovy zlatáky“. V dřívějších letech se Jackovi peníze vydělávaly snáze a víc ho těšilo je vydělávat. Tehdy bral lakotu, liknavost a přetvářku na vědomí vesele a s klidem jako člověk, který ví, že lidé jsou zlí, ale nic si z toho nedělá. Nyní ho čím dál tím více soužily neduhy a záchvaty malomyslnosti, proto ho roztrpčovalo, když jeho štědré pomoci a podpory z výdělku, vydřeného úsilím znaveného mozku, zneužíval někdo, kdo ho ještě k tomu pomlouval.

V únoru 1915, po studených a bezútěšných zimních měsících, odjel s Charmianou na Havajské ostrovy, kde chtěl strávit konec zimy. Na hřejivém slunci se každodenním plaváním a jízdou na koni zdravotně natolik zotavil, že se mohl pustit do nového románu „Jerry z ostrovů“, v němž se naposled projevil jiskřivý duch Jacka Londona. „Mohu Vás předem ujistit, že Jerry je něco docela nového a jedinečného, co v naší literatuře ještě nemáme, nejen v oboru dobrodružných příběhů o psu, ale vůbec v beletrii. Bude to kniha svěží, živá, originální, a zároveň psychologická studie o psu, která vzruší srdce všech milovníků psů i mozky psychologů.“ Kniha „Jerry z ostrovů“ líčí zábavné příhody psa na Nových Hebridách. Jack psal ve volném kimonu u stolu na otevřené verandě s vyhlídkou na lagunou lemovanou palmami a v mysli zaléтал zpátky na zasněženou

Aljašku k Buckovi z „Volání divočiny“, k tomu psu, který mu tak závratně rychle dopomohl ke slávě. Těšilo ho přemýšlet o psech a psát o nich: jsou to věrní tvorové.

Do léta „Jerryho z ostrovů“ dokončil a vrátil se do Glen Ellen. Chodil se pobavit do parku Klubu bohémů na Ruské řece, kde se scházela exkluzivní bohémská společnost, a setkával se tam s několika přáteli z uměleckých kruhů, obhajoval socialismus proti defetismu, plaval v řece a hodně pil. Z klubu si vodil Sterlinga, Martineze a ještě několik umělců domů na ranč, a tam pili dál. Jack měl už akutní urémii, ale nechtěl pít nechat ani na tak dlouho, než se vyléčí z otravy. Pracoval jenom na filmové povídce „Srdce tří“, zábavné grotesce, za kterou mu časopis *COSMOPOLITAN* nabídl pětadvacet tisíc dolarů. Byl rád, že má příležitost vyhnout se vážnému přemýšlení, a denně vyklopil na papír tisíc slov za půldruhé hodiny.

Pořád se rád smál, ale to občasné veselí bylo nucené. Finn Florich vzpomíná: „Už nepěstoval zábavné hry jako dříve, nezápasil, nehrál karty, nejezdil na koni do hor. Veselý záblesk se mu z očí vytratil.“ Už nediskutoval proto, aby se dověděl něco nového, už ho nebavily břitké slovní souboje. Přel se proto, aby vyhrál, a někdy se až hádal. George Sterling radil Uptonu Sinclairovi, aby nejezdil na Krásný ranč, protože Jack už není takový, jaký býval.

Klid a potěšení mu skýtal jen jeho ranč. Lidé, kteří tam pro něho pracovali, většinou se mu znechutili, ale nikdy neztratil důvěru v půdu. „Patřím k hospodářům, kteří hloubají v knihách, aby se poučili o ekonomických hodnotách, ale pak se vracejí k půdě jako k základnímu zdroji všech ekonomických hodnot.“ Stále zakládá nová pole, dával je osívat novými plodinami, rozšiřoval zavodňovací zařízení, stavěl nové zděné chlévy pro dobytek. Joovi Kingovi, na jehož obhajobu dal před šesti lety za své peníze vytisknout leták a jemuž se stále snažil vymoci prominutí trestu ve vězení San Quentinu, Jack napsal: „Právě jsem dostavěl nový vepřinec, nad nímž budou žasnout všichni, kdo se ve Spojených státech zabývají chovem vepřů, a jež si mohou vzít za vzor. Takový vepřinec si ještě nikdo nepostavil. Pěstuji na ranči chov jen registrovaných vepřů. Hodlám si brzy postavit vlastní jatky a chladiřnu.“

Nevychvaloval přehnaně svůj Palác pro prasata, jak se vepřinci brzy začalo říkat. Pro každou vepří rodinu tam byla zvláštní vnitřní a vnější kóje s dvěma kohoutky na tekoucí

vodu. Forni je vystavěl v uzavřeném kruhu, jehož středem bylo zděné stavení na uskladnění krmiva, a je to umělecké dílo, architektonicky bezvadné. Hodlali s Fornim také vystavět kravské chlévy s kruhovým půdorysem, které by rovněž znamenaly úsporu práce a byly by stavebně také tak důkladné. Jack napsal redakci *COSMOPOLITANU*: „Pamatujte, prosím, že pečuji o svůj ranč, jako by to byla zřítelnice mého oka. Chci se domoci dobrých výsledků práce, a já se jich domohu — takových, že se zanedlouho bude o nich psát v knihách.“

V duchu se začínal zabývat novým plánem: pomýšlel na rozšíření vzorné farmy a zároveň založení výběrové obce. Hodlal vypovědět nežádoucí pracovní síly a zaměstnávat jen takové lidi, kteří by osobně byli naprosto bezúhonní a měli by lásku k půdě. Pro každého takového pracovníka by dal postavit domek; na ranči by byl obchod se zbožím denní potřeby, které by se prodávalo za režijní ceny, a byla by tu také škola pro děti. Jack si představoval, že do své vzorné obce přijme jen tolik pracovníků s rodinami, kolik se jich na ranči uживí. „Nejvíce mě těší naděje, že za šest sedm let se budou provozní výdaje kryt s příjmy z ranče.“ Nechtěl žádný zisk, nechtěl ani vydělat na ranči to, co do něho investoval — chtěl jen dosáhnout, aby se výdaje kryly s příjmy a obec aby tvořili jen pracovníci, které by spojovala opravdová láska k půdě.

Ale ty plány hned v zárodku zmařila několikerá pohroma. Ačkoli se Jack jel o svém vepřinci poradit na zemědělskou fakultu Kalifornské university, všichni jeho registrovaní vepři na kamenné dlažbě dostali tuberkulózu a zahynuli. Krátkorohý býk vyznamenaný cenou, kterého Jack koupil na chov, v chlévě uklouzl, zaryl se rohem do země, udělal kotrmelec a zlomil si vaz. Celé stádo angorských koz vyhubila nemoc. Anglického hřebce, který na zemědělských výstavách získal několik cen a kterého Jack miloval skoro jako lidského tvora, našli na louce mrtvého. Vůbec se ukázalo, že nápad vypěstovat na ranči chov anglických koní byl velký omyl, protože měli na nohách dlouhou srst, v zimních měsících je nebylo možno držet v čistotě a nebyli tedy k ničemu. I koupě těžkých tažných koní byla chyba, protože se v zemědělství zaváděly lehčí stroje, k nimž stačily lehčí potahy, a začínaly se zavádět i traktory. I těch sto čtyřicet tisíc eukalyptových stromů, které měly růst samy a za dvacet let vynést Jackovi celé jmění, najednou nebylo k ničemu,

leda tak na palivo — o kavkazský ořech už vůbec nebyl zájem.

To znamenalo naprostý nezdar a Jack věděl, že to je nezdar, ale nechťel to přiznat. Kdyby k němu byl někdo přišel a řekl: „Jacku, tvůj ranč je omyl a stál tě už spoustu peněz, tak toho ve vlastním zájmu raději nech,“ byl by Jack protestoval, tak jako protestoval „Já toho nemohu nechat!“, když mu přátelé naléhavě domlouvali, aby zanechal stavby SNARKU. Potřeboval peníze, bez nich nemohl na ranči hospodařit, a tak se lopotil každodenně u psacího stolu, aby dostal na papír tisíc slov. Psaní, které mu dříve bylo potřebné jako vzduch a v němž se cítil ve svém živlu, ho přestalo těšit. „Píši dál jediné proto, že musím. Kdybych nemusel, nenapsal bych víckrát ani řádku. Aby bylo jasno!“

Nebyl sám, koho jeho psaní omrzelo. Omrzelo i kritiky a čtenáře, byli jím už přesyceni. Když dokončil „Srdce tří“, napsal: „Tohle je psáno na oslavu. Oslavuji tím své čtyřicáté narozeniny, svou padesátou knihu a šestnáctý rok své spisovatelské činnosti.“ Za několik dní nařká: „Mé poslední knihy už hodně dlouho nepatří k nejprodejnějším. Dovedou jiní psát líp než já? Copak se čtenáři na mne dopálili?“ „Měsíční údolí“ byla jeho poslední kniha, která měla příznivý ohlas; kniha „Síla silných“ obsahuje jeho nejlepší proletářské a prorocké povídky a nejnázorněji představuje jeho mnohostranné nadání, byla však přijata jen jako nová sbírka povídek od Jacka Londona. Ojedinělému kritikovi, který o ní referoval vlídně, Jack napsal: „Jste jediný člověk ve Spojených státech, kterému se ‚Tulák po hvězdách‘ aspoň trochu líbil. Ostatní kritikové psali, že ‚Tulák po hvězdách‘ je obyčejný krvák, krajně primitivní kriminální příběh, tak strašidelný, že jej ženy nemohou číst, a z mužů ho snad mohou číst jen ti degenerovaní. Mé příběhy jsou kruté, protože život je krutý. Ale já myslím, že život je silný, ne krutý, a snažím se, aby mé romány a povídky byly zrovna tak silné jako život.“

S časopisem COSMOPOLITAN měl Jack smlouvu na pět let, že bude za rok dodávat dva romány, takže slábnoucí obr byl úplně přikován k práci. Jeho tajemník Byrne byl nucen napsat člověku, který Jacka žádal o spolupráci na románu, k němuž by měl dobrý námět: „Musí teď psát takové věci, jaké od něho žádají nakladatelství, a s těmi je vázán smlou-

vami na kolik let dopředu.“ Když mu bylo čtyřiaadvacet let, představoval pro časopisy příliv nového života a mohl si diktovat, co pro ně chce psát. A nyní píše začátečníkovi, který by se chtěl stát spisovatelem: „Když chcete psát do časopisů, musíte psát to, co časopisy žádají. Když chcete být s nimi zadobře, musíte pískat jejich písničku!“

Už se nedovedl vzchopit k boji. Učitelce na vyšší střední škole v jednom kalifornském městečku, která ho písemně žádala o pomoc proti úplatkářským politickým machinacím, Jack odpověděl: „Je to už dlouhá řada let, co jsem se vrhal do boje za nápravu našich politických poměrů, aby se každému, ženám i mužům, dostalo, co jim po právu patří. Když si pomyslím, jak dlouho jsem vedl ten boj, připadám si jako starý veterán. Nejsem sice poražený veterán, tak zlé to se mnou není, ale nejsem už neostřílený nováček a nepředstavuji si, že se mi podaří přes noc útokem dobýt nepřátelských pozic. Jsem veterán, který nejen už nedoufá, že se dožije konce válečného tažení, ale ani si netroufá předpovědět, kdy to válečné tažení skončí.“ Příteli, který ho vyzývá, aby se přidal ke společnému útoku na náboženství, Jack píše: „Boj s náboženstvím se mi zdá už tak vzdálený jako ztlumený ohlas daleké šarvátky někde v odlehklém, zapomenutém koutku světa. Myslím, že se pouštíte do boje s protivníkem, jenž je intelektuálně už poražen.“ Mary Austinové, která si mu stěžovala, že její nejlepší literární práce nebyly správně pochopeny, odpověděl rozmrzele: „Mé nejlepší práce, do nichž jsem vložil své srdce a veškeré úsilí svého mozku, se minuly s cílem skoro u všech čtenářů na světě, ale já se proto netrápím. Jsem rád, že jsem si dobyl uznání svými surovými krváky a různými jinými věcmi, které se čtenářům líbí, přestože to znamená úplně nesprávné pochopení toho, co jsem napsal. Když lidé člověka nechápou, musí se cítit osamocení. Pokud se pamatují, proroci a věštcí všech věků se také cítili osamoceni, pokud je ovšem lidé neukamenovali nebo neupálili na hranici.“

Zalézal do své pracovny jako raněný medvěd do doupěte, aby se vylízal z ran. Když od svých stoupenců dostával pohoršené, rozhořčené a zklamané dopisy o románu „Malá dáma z velkého domu“ — ti lidé psali, že čísla časopisů s jeho románem házejí do ohně, a zapřísahali ho, aby se z oblaků zas vrátil na zem — vztekle se na ně obořil, zasažen do živého: „A já vám povídám rovnou, že jsem na Malou dámu zpropadeně pyšný.“

Nikdo jiný kromě Elizy nevěděl, jak Jacka trýzní obavy, že zešlší. Mozek měl vyčerpán, takže nebyl schopen tvůrčí práce, ale musel den co den až do konce života psát. Báł se, že se pod neustálým a krutým tlakem duševně zhroutí, a ten strach byl ještě zesilován přesvědčením, že jeho matka neměla zdravý rozum. Znovu a znovu prosil: „Slib mi, Elizo, že mě nedáš do ústavu, kdybych se zbláznil! Slib mi to!“ Eliza nemohla jeho obavy brát na lehkou váhu. Po každé ho musela ubezpečit, že ho nedá do ústavu, že o něho bude sama pečovat.

Utěšoval se jen jedinou nadějí: že nalezne moudrou a upřímnou ženu, kterou bude moci milovat, která ho bude milovat a porodí mu syna. Věděl, že mu Charmian nikdy nedá syna, po kterém tolik toužil. Nesmírně se rmoutil, že nezplodil syna, on, který zplodil ve svých knihách tolik lidských tvorů, a tak si přísahal, „že musí mít syna, ať ho vezme kde chce.“ Je doloženo důkazy, že našel ženu, kterou hledal, že ji opravdově miloval a že ona ho měla upřímně ráda. Ale své předsevzetí nikdy neuskutečnil. Nebyl schopen ublížit Charmianě. Byl na ni hodný, jako je člověk hodný na dítě, do každé své nové knihy jí vepsal vřelé věnování... protože mu dlouhá leta byla věrnou družkou a on jí za to byl vděčný.

Charmian byla pořád rozčilená a znervóznělá: věděla, že jí je nevěrný, že by ho doopravdy mohla ztratit. V Oaklandu kolovaly pověsti o jejich rozvodu. Trpěla ustavičně nespavostí a později kdekomu na ranči vykládala, že se po kolika měsících prvně vyspala teprve noc po Jackově smrti.

Jack věděl, že se ocitl ve slepé uličce. Mozek měl utrýzněn různými starostmi a trampotami, a tak neustále pil. To, co psal, bylo téměř už jenom odrazem jeho dřívějších tvůrčích schopností. V roce 1915 vydal mimo román „Malá dáma z velkého domu“ jen jednu povídku „Hyperborejská bouřka“, ale obojí napsal už rok předtím. 1. prosince 1914 si zaznamenal: „Včera jsem dokončil svůj poslední román ‚Malá dáma z velkého domu‘ a zítra začnu pracovat na novém románu, kterému asi dám titul ‚Krabice bez víka‘.“ Ten román vůbec nenapsal. A „Kancelář pro vraždy“ v polovině přerušil jako beznadějný pokus.

V lednu roku 1916 odjel s Charmianou na Havajské ostrovy — doufal, že ho slunce zas vyléčí z nemoci. Hned na počátku své spisovatelské dráhy jásal: „Socialismus je

nejnádhernější věc na světě!“ Ještě před měsícem začínal své dopisy oslovením „Milý soudruhu“ a končil „Tvůj revoluci oddaný“. Ještě před několika měsíci napsal vřelý úvod k antologii Uptona Sinclaira „Volání po spravedlnosti“, která byla obžalobou „bezpráví, krutosti a utrpení“, jehož je na světě tolik. Nenechal se zradou svých přátel a nespolehlivých pracovníků zviklat ve víře v socialistické státní zřízení; nikdy tak bojovně nevěřil v ekonomickou filosofii a logickou nutnost socialismu. Ale roztrpčovalo ho, že je lidstvo tak netečné a nesnaží se shodit své okovy. V luxusní kajutě na lodi napsal: „Vystupuji ze Socialistické strany, protože nebojuje s dost velkým zápallem a neklade dost velký důraz na třídní boj. Stal jsem se kdysi členem původní, revoluční, vzpurné a bojovné Socialistické strany dělnické. Byl jsem vychován v třídním boji a jsem přesvědčen, že kdyby dělnická třída bojovala sama, kdyby se nikdy neusmířila a nespolečila s nepřitelem, mohla by si dobýt svobody. Ale poněvadž v posledních letech socialismus ve Spojených státech neustále směřuje k smířlivým kompromisům, nemohl bych srovnat se svým svědomím, kdybych dál zůstal členem strany. A proto z ní vystupuji.“

Udělal pro socialismus hodně a socialismus udělal hodně pro něho. Nic nepomohlo, že podle svého názoru ze strany vystoupil, protože mu nebyla dost levá: svým vystoupením po patnácti letech věrných služeb zasadil straně těžkou ránu a sobě ránu smrtelnou. V „Martinu Edenovi“ vložil Brissendenovi do úst slova, jimiž Brissenden výstražně Martinovi radí, že by se měl přimknout k socialismu, protože jinak, až dosáhne úspěchů, nebude už mít proč žít. V prosinci roku 1912 odpověděl Jack jednomu svému ctiteli: „Jak jsem napsal v ‚Jacku Ječmínkovi‘, Martin Eden jsem já. Martin Eden musel zemřít, protože byl individualista. Já jsem socialista a mám socialistické uvědomění.“

Tentokrát se na Havajských ostrovech neuzdravil duševně ani tělesně. Napsal tam knihu „Michael, bratr Jerryho“, několik slabých povídek z havajského prostředí a začal román o dívce z Kavkazu, který nikdy nedokončil. Nemírně pil, aby utopil pocit nejistoty a neštěstí... Když se vrátil do Glen Ellen, přátelé ho ani nemohli poznat. Eliza o něm řekla, že to už není on. Ztloustl, nohy měl v kotnících oteklé, obličej opuchlý a oči kalné. Vždycky vypadal chlapecky, a nyní se zdál o mnoho let starší. Byl mrzutý, malomyslný, ztrápený. Jen málokdy si zval nejlepší přátele na ranč na

chvatnou večeři. Byl úplně vyšinut z rovnováhy a ztratil cíl života, v Oaklandu ho lidé vídali opilého, veřejně vyvolával hádky...

Brzy po návratu zajel do Piedmontu k Bessii, neboť konečně pochopil, že jí krutě ublížil, že si sám zavinil odcizení svých dětí. Výměnou za dvě malé pojistky na věno pro dcery, které měly být vyplaceny až za několik let, jí nabídl přídavek k apanáži. Bessie s návrhem souhlasila. Byla to zas jednou přívětivá rozmluva mezi bývalými manžely a Jack při loučení řekl: „Jestli mě někdy budeš potřebovat, přijdu k tobě, i kdybych byl na druhém konci světa.“ Bessie odpověděla: „Snad tě nebudu nikdy potřebovat, Jacku, ale kdyby se něco stalo, dám ti vědět.“

Mimo Elizu byl jen jeden člověk, jemuž plně důvěřoval a kterého měl rád: „Nakato, jsi se mnou ve dne v noci už skoro sedm let. Prožil jsi se mnou nebezpečí v kdekajících končinách světa. Zakusili jsme kolik bouří a byli jsme svědky smrti a zabíjení. Pamatuji na bouře, v nichž jsi věrně stál při mně. Pamatuji hodiny, kdy jsi mě ošetřoval v nemoci. Pamatuji naše hodiny veselí, kdy ses smál se mnou a já jsem se smál s tebou.“ Když Nakata „pána“ opouštěl, protože měl v Honolulu studovat zubní techniku, odpověděl: „Vy jste mi dal střechu nad hlavou a živil jste mě, když jsem se otrávil rybím masem, zůstal jste u mne celou noc a zachránil jste mě. Věnoval jste mi svůj vzácný čas a učil jste mě číst a psát. I před hosty jste se mnou vždycky jednal přátelsky a otcovsky. Měl jste mě rád jako vlastního syna, protože máte velké srdce.“ A tak v japonském sluhovi Nakatovi miloval Jack svého syna, protože mu nebylo souzeno poznat jinou otcovskou lásku. Když mu Eliza řekla: „Jacku, ty jsi nejosamělejší člověk na světě. Nikdy jsi neměl to, po čem jsi tolik toužil,“ zeptal se jí: „Jak to k řasu víš?“

Vždycky říkal, že chce mít krátký život, ale veselý. Chtěl se zaskvět jako do běla rozžhavený meteor na obloze a zanechat zářivou stopu svých myšlenek v duši každého člověka. Chtěl hořet prudce a spalovat se vnitřním žářem, bál se, že ho smrt zastihne znenadání, než ze sebe vydá všechno a než lidem sdělí všechny své myšlenky. Kolikrát si s Georgem Sterlingem řekli, že nechtějí, aby z nich byly živé mrtvoly — až vykonají své dílo, až vyžijí svůj život, odporoučejí se sami.

Ještě by byl rád napsal pár knih, román „Kristus“ a svůj

vlastní životopis „Námořník na koni“, knihu „Nejvzdálenější svět“ z budoucích věků, až naše planeta začne chladnout. Dokud byl ještě silák, nebylo by se vešlo ani do nejtlustší knihy všechno, co chtěl o zvolené látce říci, ani ve svých padesáti knihách neprojevil veškerou svou sílu. Ale byl už znaven. Když se podíval na řady bílých krabic ve své pracovně, v nichž měl nashromážděny zápisky k dalším románům a povídkám, ke spoustě románů a povídek, znovu si říkal, že už není neostřílený nováček, že je veterán a ví, že nepřátelských pozic nelze dobýt přes noc, ba ani za jedno století.

Dobojoval svůj boj, přispěl světu svým dílem, pověděl, co chtěl, a zasloužil si odpočinek. Dopustil se mnoha chyb a provedl spoustu hloupostí, ale mohl si alespoň se zadostučiněním říci, že nikdy nebyly malicherné. Nikdy v životě „nesázel nízko“. Byl už čas, aby udělal místo mladším, kteří boj povedou dál. Nohy mu slábly jako boxerům, o nichž rád psal, docházel mu dech, musel ustoupit mládí, o němž prohlašoval: „Nenasytné a neodolatelné mládí — které musí dokázat své a které je nesmrtelné.“

Je to zvláštní, říkal si v duchu, jak se lidé mohou proslavit něčím, co o nich vůbec není pravda. Kritika jeho dílům vytýkala, že nejsou oduševnělá — a jeho psaní je přece prosyceno filosofií a láskou k člověku. V každém jeho díle se prolínají dva motivy: vnější, dějový motiv a spodní motiv, jež postřehlo jen málo čtenářů. Když byl jako zpravodaj v rusko-japonské válce, přišel k němu do hotelu někdo z úřadu a řekl mu, že se dole na náměstí shromáždili všichni obyvatelé města a chtějí ho vidět. Byl na to nesmírně pyšný, že se jeho sláva rozšířila až do Koreje. Ale když vystoupil na pódium, které pro něho připravili, požádal ho ten úředník, aby byl tak laskav a vyňal si z úst umělý chrup. Jack tam stál půl hodiny, vyndával si z úst umělý chrup a zase si jej nasazoval a zástup mu nadšeně tleskal: a tehdy poprvé postřehl, že se lidé jen málokdy proslaví tím, oč usilují a proč umírají.

Dívce, která ho písemně žádala o povzbuzení, odpověděl: „V dospělém věku se nevzdávám přesvědčení, že život je zábavný a napínavý. Měl jsem v životě štěstí, málokdo ze stamiliónů příslušníků mé generace měl v životě takové štěstí jako já, a přestože jsem hodně vytrpěl, přece jsem hodně prožil, hodně viděl a hodně procítil, kolik toho nebylo dopřáno průměrným lidem. Ano, život stál zato. Důkazem

toho je, že teď tloustnu, jak mi přátelé vytýkají — není tohle samo o sobě názorný důkaz duchovního vítězství?“

Bavil ho víc dlouhý boj než závěrečné vítězství: lehkomyšlná matka ho uvrhla do propastné bídy a on si z ní sám probíjoval cestu, bez cizí pomoci. Ovšem, pomáhal mu v tom bystrý mozek zděděný pro profesoru Chaneym, a přestože se svým nemanželským původem často trápil, jistě mu z velké části vděčil za svou průbojnost. Myslíval si, že by profesor Chaney byl na svého syna hrdý.

Zdálo se mu, že i svět stárne. „Ve světě už nejsou téměř žádná dobrodružství. I purpurové přístavy sedmi moří vybledly a já začínám být prozaický.“ Kdysi dávno řekl: „Jsem idealista, který věří v realitu, a proto se snažím, aby všechno, co pší, bylo realistické, abych pořád stál nohama na zemi a stejně i mí čtenáři, tak aby se naše sny nikdy neodtrhly od skutečnosti.“ Snil velké sny, vznešené sny — a nyní měl čelit skutečnosti, že to snění i jeho život končí.

Před samým koncem se skomírající organismus ještě naposledy vzepjal v silném rozmachu. Jack napsal „Jako pravěký Argus“, jednu ze svých nejhezčích aljašských povídek, a „Princeznu“, jednu ze svých nejlepších povídek z trampského života, promítnutou do divokého prostředí jeho dobrodružného mládí a dob jeho prvních úspěchů. Přikázal Fornimu, aby mu pro dojnice postavil zděné chlévy s kruhovým půdorysem, a dal přivést z dalekého nádraží pytle cementu. Chtěl zásobovat San Francisco prvotřídním mlékem, máslem a sýrem... aby i John London byl na svého syna hrdý. Zajel s Elizou na veletrh do Sacramenta, řekl, že budou dál uskutečňovat na ranči všechno, co si předsevzali, že si už postavili tři ohrady a brzy začnou stavět čtvrtou, že ranč bude soběstačný. Ze tří různých katalogů si objednal z New Yorku a z Anglie knihy „Obležení města Rochelle“, „Úpadek rasy“, „Manželské štěstí“, Dreiserova „Genia“, „Congo“ od Stanleyho a desítky knih o botanice, vývojové teorii, kalifornských plodinách, opicích a o založení New Yorku přistěhovalci z Holandska.

Měl v úmyslu odjet do Orientu a zajistil si už lístky na loď, sám pak je odvolal. Měl v úmyslu zajet si sám do New Yorku, ale Ninetta Paynová se s ním začala soudit o vodní právo, a tak musel zůstat v Glen Ellen. Téměř kdekdo mu to vodní právo přiznával. Poslední den soudního řízení svědčil před soudem čtyři hodiny a pak odešel s Fornim, který vzpomíná, že Jack už měl těžkou urémii

a velké bolesti. Za několik dní si pozval na oběd všechny sousedy, kteří podepsali žádost o zavedení soudního řízení: v přátelském rozhovoru u prostřeného stolu ho ubezpečili, že nikdy nechtěli, aby soud rozhodl proti němu.

V úterý 21. listopadu roku 1916 dokončil přípravy k odjezdu do New Yorku, kam se měl vydat nazítří, a klidně si o samotě popovídal s Elizou do devíti hodin. Říkal, že se cestou zastaví v Chicagu na dobytkařském výstavním trhu, koupí tam několik pěkných kusů dobytka a pošle je nákladním vlakem domů. Eliza se chtěla podívat na dobytčí trh v Pendletonu ve státě Oregon, jestli by tam neměli nějaký krátkorohý dobytek. Jack jí řekl, že má každému pracovníku s rodinou dát na ranči k užívání akr půdy a pro každého vystavět domek, že má vybrat místo pro obecnou školu a podat žádost, aby jim byl přidělen učitel. Měla také vybrat parcelu pro obchodní dům. Chtěl si vypěstovat na ranči všechno, aby byl soběstačný, aby se nemuselo přivážet nic kromě mouky a cukru.

Když před spaním spolu šli dlouhou chodbou k Jackově pracovně, Eliza řekla: „Než se vrátíš, bude obchodní dům už dostavěn a plný zboží, i škola už bude hotová a žádost o učitele podaná. Podáme si také žádost k úřadům, aby nám tu zařídili poštu, a já nechám na ranči postavit vysokou vlajkovou žerď a budeme tady mít vlastní obec a na důkaz naší nezávislosti ji pojmenujeme INDEPENDENCE.“ Jack ji objal paží kolem ramenou, drsně ji k sobě přitiskl, smrtelně vážně řekl „Já vím, že jsi skvělé děvče,“ a prošel pracovnou na verandu, kde spal.

Druhý den v sedm hodin ráno přiběhl japonský sluha Sekine, kterého měl Jack místo Nakaty, vyděšený do Elizina pokoje a křičel: „Honem, slečno, pánovi je špatně, snad se opil!“ Eliza přilétla na verandu, ihned poznala, že Jack je v bezvědomí, a zatelefonovala do Sonomy pro doktora Allana Thomsona. Ten zjistil, že Jack je omámen nějakým narkotikem a že je zřejmě v bezvědomí už dost dlouho. Na podlaze našel dvě prázdné ampulky, označené Morfium-sulfát a Atropinsulfát, a na nočním stolku uviděl psací blok s výpočty smrtelné dávky těchto drog. Ihned telefonoval do lékárny v Sonomě, aby připravili protijed na otravu morfiem, a požádal svého asistenta doktora Hayese, aby mu jej přivezl. Oba pak vypláchli Jackovi žaludek, dali mu injekce pro povzbuzení srdeční činnosti a provedli masáž nohou a rukou. Jen jednou se přitom lékařům zdálo, že Jack začíná

reagovat. Pomalu otevřel oči a zamumlal cosi, co mohlo znamenat „Haló!“. A hned zase upadl do bezvědomí.

Doktor Thomson vypráví, že Eliza zdrcená zármutkem Jacka celý den ošetřovala, že „v rozmluvě se mnou toho dne paní Charmian Londonová (jíž Jack závěť sepsanou v roce 1911 odkázal veškerý svůj majetek) řekla, že je velmi důležité, aby se jako příčina nyní už pravděpodobné smrti Jacka Londona udala urémie. Odpověděl jsem jí, že bude těžké vysvětlovat jeho smrt pouze urémií, poněvadž jestli někdo odposlouchával telefonní hovory, vedené během dopoledne, nebo telefonní hovory s lékárnou, kde se připravoval protijed, patrně si bude smrt Jacka Londona vysvětlovat otravou morfiem.“

Jack zemřel téhož dne večer chvíli po sedmé. Nazítří byly jeho ostatky odvezeny do Oaklandu, kde se u nich střídaly Flora, Bessie a obě dcerky. Celý svět truchlil nad jeho skonek. V Evropě se o jeho smrti psalo v novinách víc než o smrti rakouského císaře Františka Josefa, který zemřel den před Jackem. Jak truchlila Amerika, o tom podala nejvýstižnější svědectví žena Luthera Burbanka: když si zprávu o Jackově smrti přečetla v novinách, okřikla hlouček studentů, kteří jí pod okny dováděli na nádvoří university: „Přestaňte se smát! Umřel Jack London!“ Edwin Markham o Jackovi prohlásil, že představoval mládí světa a jeho skonek ve světě pohasla jiskra odvahy.

Téhož dne v noci byly Jackovy ostatky spáleny v krematoriu a jeho popel se vrátil na Krásný ranč. Nedávno, přede dvěma týdny, na vyjíždce s Elizou zastavil Jack svého koně na vysokém kopci a řekl: „Elizo, až umřu, chci, abys můj popel pohřbila tady na tom kopci.“ Eliza uložila urnu s Jackovým popelem do skřínky, na vrcholku kopce, zastíněném před horkým sluncem madronovými a manzanitovými keři, vykopala jámu, vložila do ní skříňku s urnou a svrchu ji zacementovala. Navrch pak dala položit velký kvádr červeného pískovce, jež kdysi Jack nazval „Kámen, který se zedníkům nehodil na stavbu.“

Volání Jacka Londona

Irving Stone je zkušený autor několika proslulých biografických románů, z nichž u nás je nejznámější *Žít po životě*, vyprávění o slavném holandském malíři Vincentu van Goghovi. Stonova kniha *Námočník na koni* celkem spolehlivě zachycuje život a literární vývoj amerického spisovatele Jacka Londona. Není pochyby, že autor byl především stržen barvitými stránkami Londonova životopisu a podivuhodným ohlasem jeho díla ve světě. Tak jako si Stone našel u Londona titul pro svou knihu, kterým sám sebe London charakterizoval pro svou chystanou autobiografii, tak Londonův životní příběh pomohl druhému spisovateli napsat práci neobyčejně zajímavou a poutavou. Zásadou Stonovou je, že ji napsal, jak dovedl nejlépe a nejvěrněji, i když velký ideový zápas, který London nakonec zaplatil životem, mu zůstal jen doplňujícím tématem, nikoliv hlavním středem pozornosti. Přestože v bohaté londonovské literatuře, která se rozrostla od knížek se senzační literární příchutí až k upřímným vyznáním lásky a obdivu, od universitních disertací až k závažným literárně vědným studiím, najdeme řadu detailů a pohledů, které Stone do své práce nezahrnul, zůstane jeho knížka srdečným průvodcem do rozlehlého Londonova díla a jeho složité osobnosti.

U nás je známé zkrácené vydání jiné biografie Londonovy od amerického socialistického literárního historika Philipa S. Fonera, které vyšlo v r. 1951 pod názvem „Jack London — americký rebel“ v Mladé frontě. Tento pokus, ideově jasněji koncipovaný než kniha Stonova, postrádá zase její literární bezprostřednost. Značně subjektivní pohled na osobnost Jacka Londona poskytuje kniha jeho druhé ženy Charmian Kittredge Londonové (1921), která u nás přeložena nebyla, stejně jako „nekonvenční biografie“ jeho dcery Joan nazvaná „Jack London a jeho čas“. Když v r. 1960 vyšla v Halle v NDR marxistická, vědecky dobře poučená Londonova monografie od Heinze Rentmeistera, zdálo se, že shrnuje s kritickou přísností současný pohled na Jacka Londona. Přece však zůstává otevřenou otázkou, jak nejlépe a nej-spravedlivěji se přiblížit mohutnému a nezapomenutelnému

zjevu spisovatele, který v sobě ztělesňuje jedno období hledání a nadějí směřem k socialistické budoucnosti, jež se před našima očima stala bezprostřední přítomností.

Nad Stonovou životopisnou knihou by bylo zbytečné opakovat data Londonova života. Spíše by se měla stát podnětem pokusit se o nalezení klíče k jeho osobnosti z času a prostoru, ve kterém žijeme. Hledat klíč k výkladu je rozhodně lepší, než ho soudit dnešními požadavky a dnešními dějinnými zkušenostmi. Kdybychom mohli postavit proti Londonovi v jeho době a zemi postavu zcela neproblematickou, z ryzího kovu raženou, snad bychom byli více oprávněni vyčítat mu ideovou nejasnost, jeho kolísání v činech a výstřelky jeho života.

Úhelným zážitkem Londonova dětství i dospívání byl ustavičný vyčerpávající boj o holou lidskou existenci, jak jej podstupovala na přelomu 19. a 20. století ve Spojených státech dělnická třída i zproletarizovaná maloburžoazie v době, kdy se země dostala do stadia monopolního kapitalismu. V Londonově vědomí i v nejzasutějších koutech jeho paměti strašila vzpomínka na tisíce zbytečně utracených životů, na děti i starce, nemocné i mrzáky, na lidi vyčerpané a ubité dřinou, kteří se bez své viny dostali na dno společenské šachty. London byl pevně rozhodnut z tohoto dna za každou cenu uniknout, obětovat zdraví, spánek, všechno, aby se tam nikdy nemusel vrátit. Když se ve svém trampkém období seznámil s Komunistickým manifestem a pak značně později s dílem Darwina, Spencera, Marxe a Nietzscheho, hledal a bral si z nich dychtivě především formulace svých vlastních nejasněných myšlenek, vlastních zkušeností a názorů. V Komunistickém manifestu nacházel oporu pro svou víru v prospěšnost a důstojnost lidské práce a nevyhnutelné vítězství socialismu. Darwinovo učení jej utvrzovalo v jeho materialistickém protináboženském postoji a zdánlivě i vysvětlovalo krutý existenční boj nejen mezi člověkem a přírodou, ale i mezi lidmi navzájem. Z filosofie Herberta Spencera, jehož učení ovlivnilo nejen Londona, ale i celou řadu jiných amerických spisovatelů tohoto období, především Norrise a Dreisera, čerpal London pesimistické přesvědčení, že nelze proniknout k účelu a smyslu lidského života, který je podle Spencera výsledkem vývoje nezávislého na lidech. Nietzsche byl Londonovi blízký především svým patosem, svým osamělým rebelantstvím, daleko více tím, *jak* věci říkal, než *co* říkal. V první dychtivosti poznávat,



Typická obálka českého masového vydání spisů Jacka Londona (u Kočího)

osvojovat si, zmocnit se všech dostupných myšlenek, byl London až příliš ochoten zastírat si rozpory, využívat nových poznatků eklekticky a dost náhodně.

Přitom je jisté, že doba, kdy vstoupil pod vlivem Komunistického manifestu do Socialistické strany (1901), a léta, která bezprostředně následovala, byla nejšťastnější dobou jeho existence. „Zde byl život čistý, ušlechtilý a silný,“ píše London o prostředí Oaklandské socialistické skupiny. „Zde sám sebe ospravedlňoval, stával se úžasnou a silnou věcí, a já byl šťasten, že žiji.“ London tu poznal „lidi výborného ducha a nesobeckého srdce“, kterým šlo o zcela jiné hodnoty než o peníze a vidinu americké úspěšnosti.

Přesto je třeba vidět, že Oaklandská socialistická skupina bylo sdružení intelektuálů bez silnějšího vlivu proletariátu a že díla Marxova a Engelsova nebyla tehdy v Americe dostupná (kromě Komunistického manifestu a prvního dílu Kapitálu). Valná část literatury v oaklandské odbočce byla spíše pseudosocialistická a pseudomarxistická. Londonův horečný způsob života a touha vyniknout co nejrychleji způsobovaly také, že stále odkládal na neurčito studium děl, jako bylo právě dílo Marxovo, k jejichž plnému pochopení bylo třeba vytrvalého a soustředěného myšlenkového úsilí.

A konečně, London se nesetkal na své životní dráze s nikým, kdo by mu byl „živým kompasem“, myslitelskou i politickou autoritou, kdo by v jeho životě měl podobný význam jako Vladimír Iljič Lenin pro život a dílo Maxima Gorkého, jehož dráha životních universit začínala velmi obdobně jako spisovatelská dráha Londonova. A tak v Londonovi úspěšném zní jako stálý podtext melancholie nad zaslým životem plným svobody, prostoty, opravdovosti.

Tou měrou, jak se London dopracovává k bohatství a slávě a jak sílí jeho víra ve vlastní osobnost a v individualismus vůbec, zvětšují se i rozpory v jeho světovém názoru. Považuje se za socialistu, ale vyznává i teorii rasové nadřazenosti bílých, věří do posledních svých dnů v konečné vítězství socialismu, ale ospravedlňuje i útočnou válku, jakou vedly Spojené státy proti Mexiku. V r. 1916 vystupuje ze Socialistické strany s odůvodněním, že „jí chybí oheň a bojovnost a protože pozbyla energie v třídním boji“. Je to celkem přesná a spravedlivá charakteristika této sociálně demokratické strany, ale sám London už zdaleka nevolí boj. Končí v bezvýhodném pesimismu a zoufalé osamělosti.

JACK LONDON



Z MÉHO ŽIVOTA

*Chlebečkova obdílka Londonovy autobiografie v Knihovně kuriosit a aktualit,
vydávaných Ant. Boučkem*

Přes tyto rozpory působilo Londonovo dílo velmi podstatně na celý proud americké literatury, a to jak na jeho generační současníky, tak na celou řadu mladších prozaiků. I když v rámci doslovu není možno ukázat, nakolik se jeho pozdější vliv prolínal s působením jiného významného kritického realisty, Theodora Dreisera, je přesto jisté, že bez Londonova podílu si lze těžko představit rozvoj moderní americké sociálně angažované literatury, ať už máme na mysli nejlepší díla Uptona Sinclaire nebo Sinclaire Lewise, Johna Dos Passose, Ernesta Hemingwaye nebo Williama Faulknera, Johna Steinbecka či Ersaína Caldwell. London, ve své anarchistické podobě bouřliváka a tuláka z trati, byl nepochybně i patronem současné — nebo aspoň velmi nedávno — skupině amerických beatníků.

Těsně před první světovou válkou a brzy po ní, v době kdy v Americe ustává již v podstatě vydávání knih Jacka Londona, rozšiřuje se Londonovo dílo do Evropy a také v Čechách nachází živý a silný ohlas. Vzniká pevná londonovská tradice, která do značné míry trvá bez přerušení až dosud. První londonovský svazek vyšel u nás r. 1911 v Pestré knihovně (*Na suchu a na moři*). Další vyšel r. 1913 ve známé edici Kamilly Neumannové Knihy dobrých autorů. (*Bílý tesák*). R. 1921 vydává Komunistické nakladatelství román *Železná pata* a o rok později Antonín Bouček, redaktor a spoluzakladatel Rudého práva, Londonovu autobiografii pod názvem *Ž mého života*. Zatímco buržoazní nakladatelé viděli v díle amerického spisovatele jen snadný kasovní úspěch a buržoazní kritika se snažila odsunout jeho dílo mezi kolportážní „lidovou“ literaturu, našli si k němu pokrokoví umělci a kritici brzy vřelý poměr. Příkladem takového podcenění Londona z hlediska omezených maloměstských předsudků je „informace“ v Ottově slovníku naučném z r. 1909, která Londona charakterizuje takto: „Nemaje stálého obydlí ani patrných prostředků k výživě, octl se mnohokrát v šatlavě“. Z těch, kdo se naopak hned od počátku Londonem u nás vážně zabývali, nutno jmenovat básníka Josefa Horu, obsáhlou recenzi uveřejnil o něm A. M. Píša v časopise Proletkult, redigovaném S. K. Neumannem. Postupně u nás vychází téměř celé Londonovo dílo v nejrůznějších vydáních. V seznamu četby Julia Fučíka z let 1919—1922 jsou knihy Jacka Londona. Za okupace, kdy zvláště bylo třeba vydávat knihy povzbudivého a silného příkladu, plánuje Bedřich Václavěk pro edici

„Podivuhodné životy“ — pak již neuskutečněnou — též autobiografii Jacka Londona.

Literární souvislosti s tvorbou Londonovou se u nás projevují v díle dvou spisovatelů a básníků, jejichž data narození a počátky tvorby spadají přibližně do téhož časového období jako u Londona. Je to S. K. Neumann (nar. 1875) a Jiří Mahen (nar. 1882). Jejich důvěrné sžití a sblížení s přírodou je ovšem v našich podmínkách o mnoho méně drsnější, a proto značně lyričtější než v Londonových povídkách ze Severu a z Jižních moří. Vzor Jacka Londona-reportéra, pronikajícího do londýnských nocleháren a brlohů, zapůsobil mocně na Egona Ervína Kische.

Po velikém rozšíření a popularitě svého díla přestal být London v letech třicátých u nás vyloženě čtenářskou záležitostí a působí se všemi klady i záporů na mládež, na tehdejší trampské hnutí, jehož část si vyzvedla dokonce jméno Jacka Londona na štít. Přispěla k tomu touha po přírodě a svobodném životním projevu stejně jako touha vymanit se z tísnivého sociálního postavení. Tisíce nitek vázalo onu mládež jiné země a jiné generace s osudy a dýly Londonovými.

A přesto, že z generace oněch londonovských trampů je dávno již generace otců, že doba u nás zatím dospěla k převratům a změnám zcela podstatným, neumlká ani pro dnešní mladou generaci volání Jacka Londona, jak o tom svědčí velký zájem, který předcházal vydání této knihy.

Snažme se určit příčiny, proč nám zní tento hlas dosud jasně a srozumitelně. Není to jen touha po čisté nedotčené přírodě, ohrožené rozpětím civilizace a technických prostředků. Není to také jen Londonův romantismus dalekých a nedostupných krajin, houževnatost jeho hrdinů, dobrodružné situace, v kterých se ocitají. Je to především bezprostředně přátelský, lidský hlas Jacka Londona, který k nám tak sugestivně proniká z nejlepších stránek jeho díla, zvláště z jeho krásných povídek. Je to hlas nesmírně upřímného člověka, který si přitahuje čtenáře „za klopou kabátu“, vypráví, svěřuje se, obžalovává, klopýtá, hledá — a odmítá být poražen. A to je základní příčina, proč dosud vnímají mladé čtenářské generace přes rozdíl času a doby tak blízce a důvěrně volání Jacka Londona.

Jiří Žantovský

Bibliografická poznámka

IRVING STONE narozen 14. července 1903 v San Francisku v Kalifornii. Vystudoval na universitě v Kalifornii a v tomto státě také žije se svou rodinou. Povoláním spisovatel, autor převážně životopisných románů. Publikuje od r. 1926. Podílel se také jako scénarista na řadě životopisných severoamerických filmů.

Z jeho knih jmenujeme:

Pageant of Youth (Průvod mládí) — 1933

Lust for Life (Žízeň po životě) — 1934 — (vyšlo několikrát česky, naposled v SNKLHU)

Sailor on Horseback (Námořník na koni) — 1938 — česky vyšlo v r. 1941, 1948, 1963

False Witness (Falešný svědek) — 1940

Clarence Darrow for the Defence (Clarence Darrow za obhajobu) — 1941

They Also Ran (Oni také utíkali) — 1943

Immortal Wife (Nesmrtelná žena) — 1944

The Agony and The Ecstasy — (Trýzeň a vytržení, životopis Michelangelův) — 1958

Kromě vlastních knih vydal Stone v r. 1937 jako editor korespondenci Vincenta van Gogha s jeho bratrem pod názvem Dear Theo (Milý Theo).

Vysvětlivky

Str.

25 IRVING WASHINGTON (1783—1859)

Americký spisovatel a diplomat. Mimo jiná díla, významná pro americkou literaturu, například ironickou historii založení New Yorku holandskými přistěhovalci, „Kolumbovy plavby“ (Voyages of Columbus) a životopis vůdce dobrovolnických vojsk v osvobozené válce anglických kolonií v Severní Americe (1770—1781) a prvního prezidenta Spojených států Jiřího Washingtona (A Life of Washington), vydal povídky a črty a proslulou knihu 41 esejí „Alhambra“, v níž vypráví legendy, které se vztahují k tomuto starobylému paláci v Granadě, a popisuje jeho smíšený maursko—španělský architektonický sloh.

ŽIVOTOPIS GARFIELDŮV

Garfield James Abram (1831—1881), americký státník, se vyznamenal jako voják v občanské válce a v americkém Kongresu jako vůdce republikánské strany, která tehdy měla oproti straně demokratů pokrokové tendence. V roce 1880 byl zvolen za prezidenta Spojených států a v roce 1881 byl na něho spáchán atentát, jehož následkům za několik měsíců podlehl.

OUIDA

Pseudonym anglické spisovatelky Marie Louisy de la Ramée (1839—1908), autorky velmi oblíbených románů (napsala jich čtyřicet) většinou z prostředí vyšších společenských vrstev, které poutaly čtenáře rušným dějem a vypravěčským uměním a v nichž se projevoval vzpurný odpor proti moralizování tehdejší anglické beletrie.

28 SMOLLETT TOBIAS GEORGE (1721—1771)

Anglický spisovatel, povoláním lékař. Jako loďní lékař sloužil na lodích daleké plavby a svá dobrodružství vylíčil v námořním románu „Roderick Random“ (vyšel v českém překladu). V románu „Dobrodružství Peregrina Pickla“ (Adventures of Peregrine Pickle) vylíčil příhody odvážného darebáka a satiricky zaútočil na společenské, politické a literární poměry v soudobé Anglii.

COLLINS WILKIE (1824—1889)

Anglický spisovatel a literární přítel Dickensův. Vynikl jako autor románů, jejichž hlavním námětem je odhalení zločinu. Jeho nejznámější romány jsou „Bílá paní“ (The Woman in White) a „Měsíční kámen“ (The Moonstone). Oba vyšly i česky.

39 KIPLING RUDYARD (1865—1936)

Anglický spisovatel narozený v Bombaji v Indii, kam se po studiích v Anglii v r. 1882 vrátil jako novinář. Proslavil se hlavně povídkami, v nichž anglické čtenáře seznamoval s indickým prostředím a životem, a proslul též jako básník. U nás jsou nejznámější dva svazky jeho „Knihy džunglí“ a román „Kid“.

64 BABEUF FRANÇOIS NOEL (1764—1797)

Francouzský revolucionář, který ve své publicistické činnosti, zejména ve svém listu *Le Tribun du Peuple* (Tribun lidu), vystupoval pro radikální řešení sociálních problémů v době Velké francouzské revoluce. K hlásání zásad v duchu utopického rovnostářského komunismu založil Babeuf s přáteli Klub Rovných. Když jeho propaganda převratných politických myšlenek se stala Direktoriu francouzské buržoazní revoluce nebezpečnou, byl zatčen a po marném pokusu o sebevraždu popraven gilotinou. Karel Marx si velice vážil Babeufových zásluh o ujasnění myšlenky, že nestačí změny politických forem k vyřešení sociální otázky ve prospěch proletariátu.

SAINT-SIMON CLAUDE HENRI de (1760—1825)

Francouzský myslitel šlechtického původu, jeden z hlavních představitelů utopického socialismu. Účastnil se na krajní levici francouzské revoluce. Ve svých literárních pracích soustavně ukazoval na potřebu reorganizace lidské společnosti tak, aby se dostalo „největší blaho největšímu množství“, které spatřoval v dělnictvu jako skupině lidstva nejchudší a nejpočetnější. Dělnictvo však nepokládal za samostatnou třídu, nýbrž za součást „strany výrobců“. Své názory podal ve značně mystickém souhrnu v knize „Nové křesťanství“ (1825), z něhož vyšla celá saint-simonistická škola vlivně působící na počátku 19. století na vývoj evropského myšlení. Karel Marx a Bedřich Engels věnovali v Komunistickém manifestu utopickému socialismu kapitulu „Kriticko-utopický socialismus a komunismus“, ve které se kriticky zabývají i názory Saint-Simona.

FOURIER CHARLES (1772—1837)

Byl obchodním zástupcem, který jinak celý svůj život věnoval rozvíjení myšlenek o nové úpravě lidské společnosti. Jak svým podivínským životem, tak neobyčejnou schopností vytvářet fantastické projekty zůstával značně osamocen v ideových proudech na počátku 19. století. V řadě spisů nastínil svůj plán společenských reforem, které chtěl uskutečnit v skupinách, žijících kolektivním způsobem ve falanstérech, organizovaných jako pracovní družstva. Během století byla učiněna i řada pokusů realizovat Fourierovy myšlenky, které vždy ztroskotaly na své hospodářské

Str.

a společenské izolovanosti. Nicméně vliv Fourierův zasáhl účinně do pohybu společenského myšlení.

64 PROUDHON PIERRE JOSEPH (1809–1865)

Francouzský socialistický teoretik — utopista. R. 1840 vydal své první dílo „Co je vlastnictví“, v němž rozvíjel jako základní tezi, že majetek je krádež. R. 1844 se seznámil s Karlem Marxem, který ho později, když proudhonovské myšlenky se vyvíjely směrem k anarchismu, velmi ostře polemicky potíral. Proudhon ovlivnil anarchistické ideje Bakunina a Kropotkina a měl také ohlas v českém anarchistickém hnutí.

73 SWINBURNE ALGERNON CHARLES (1837–1909)

Anglický básník, představitel generace, která se bouřila proti viktoriánské společenské a literární konvenci. Proslul sbírkou „Básně a balady“ (Poems and Ballads), která pohoršila anglickou literární kritiku svou otevřeností zvláště v oblasti erotiky: kritika prohlašovala Swinburnovy básně za dekadentní. Mezi studenty si získala velkou oblibu „Oslava Venuše“ (Laus Veneris, lat.).

86 BLANKVERS

Nerýmovaný verš, jambický pentametr (verš o pěti většinou dvojslabičných stopách s přízvukem na druhé nebo poslední slabice), od 16. století všude užívaný v anglické klasické dramatické a epické poezii. Blankversem psal William Shakespeare své tragédie i komedie.

SPENSEROVSKÁ STROFA

Nazvaná podle anglického básníka Edmunda *Spensera* (1552 až 1599), který ji použil ve svém velkém alegorickém eposu na oslavu královny Alžběty „Krásná královna“ (Faerie Queene). Je to sloka vytvořená z osmi pětistopých jambických veršů a zakončená šestistopým jambickým veršem, v níž se rýmy střídají podle schématu: a b a b b c b c c

NORRIS FRANK (1870–1902)

Americký spisovatel narozený v Chicagu. Jako chlapec se odstěhoval s rodiči do San Franciska, které je dějištěm jeho románů. Z romantického básníka a povídkáře se vyvinul v realistického spisovatele, autora třísvazkového románu „Epos o pšenici“ (The Epic of the Wheat), v němž vylíčil sociální a ekonomické podmínky amerických farmářů. První díl trilogie, „Chobotnice“ (The Octopus), který líčí boj farmářů o půdu proti železničním společnostem, vyšel v českém překladu. *Belmontovu akademii*, kde Frank Norris studoval a kde Jack London pracoval v parní prádelně, založil v 19. století bankéř August Belmont, který si získal zásluhy v ob-

čanské válce tím, že financoval severní státy Unie, válčící s otrokářskými jižními státy.

82 MILTON JOHN (1608—1674)

Anglický básník, bojovný stoupenec pokroku a oddaný přívrženeц Olivera Cromwella, vůdce revoluční opozice v parlamentě a jejich vojsk v boji proti královskému absolutismu a feudální šlechtě. Miltonova prozaická díla teologická jsou veskrze polemická, například „Areopagitica“ je slavnou obhajobou svobody projevu v anglické literatuře. Miltonovo největší básnické dílo je „Ztracený ráj“ (Paradise Lost), alegorický epos o pádu praotce lidí. Do češtiny jej přeložil Josef Jungmann (1773—1847).

85 HAECKEL ERNST (1834—1919),

Německý přírodovědec a filosof, v letech 1862—1908 profesor na universitě v Jeně. Jako stoupenec přírodní filosofie a hlasatel darwinismu stál na zásadách přírodovědeckého materialismu a byl odpůrcem náboženství. Haeckelovo dílo Záhady světa, za které byl autor persekvován, vzbudilo svým pokrokovým ateistickým stanoviskem ve své době značný rozruch. Aplikace Darwinových zákonů boje o život na lidskou společnost přivedla Haeckela blízko reakčním idejím rasismu a za první světové války mezi obhájce německého imperialismu.

93 HARTE BRET (1836—1902)

Americký povídkář, který od mládí žil v Kalifornii, kde krátkou dobu pracoval v dolech, pak působil v San Francisku jako novinář a založil literární měsíčník *Overland Monthly*. Autor bujných humoristických básní a povídek, hlavně z krušného života prostých lidí, průkopníků civilizace na americkém Západě. Proslavil se povídkou „Štístko tábora křiklounů“ (The Luck of Roaring Camp), která je obsažena v českém výboru jeho povídek a veršů „Kalifornské povídky a legendy“.

98 IKONOKLASTICKÝ

Slovo odvozené z řečtiny, znamená totéž co obrazoborecký.

SMITH ADAM (1723—1790),

Zakladatel klasické ekonomie a filosof. Podle jeho učení, které je podáno v českém výboru pod názvem Bohatství národů, nespočívá toto bohatství jen v penězích a ve „výrobcích“ půdy, nýbrž i v hodnotě a nadhodnotě výrobků, které vzniknou lidskou prací z přirozených statků.

99 MALTHUS THOMAS ROBERT (1766—1834)

Anglický farář a ekonom, autor reakční teorie zastávané ve spise

Str.

Rozprava o zákonech populace, hlásající, že rostou-li prostředky obživy aritmetickou řadou, roste populace řadou geometrickou. Proto v zájmu vykořisťovatelské třídy doporučoval proletariátu omezení porodnosti.

99 RICARDO DAVID (1772–1823)

Anglický ekonom klasické buržoazní školy. Ve svém hlavním díle se zabývá rozdělením bohatství a rozeznává tři hlavní druhy důchodů: pozemkovou rentu, kapitálový zisk a mzdu. Podle Lenina „Adam Smith a David Ricardo, studující hospodářský řád, položili základ pracovní teorie hodnoty“. Marx pokračoval v jejich díle.

BASTIAT FRÉDÉRIK (1801–1850)

Francouzský ekonom. Hájl ve svých spisech, z nichž nejznámější je Ekonomická harmonie, liberalistické stanovisko proti socialismu a komunismu.

112 MILL JOHN STUART (1806–1873)

Anglický filosof a ekonom, epigon klasické ekonomie, jímž se uzavírá ricardovská škola. Snaží se na rozhraní liberalismu a socialismu o kompromis učení této školy s požadavky proletariátu.

ARISTOTELES (384–322 př. n. l.)

Řecký filosof, podle Engelse nejuniverzálnější mezi starými filozofy. Žák Platonův, který provedl protiidealistickou kritiku platonovských idejí. Své názory na stát a veřejný život i zkušenosti z ústavního života řeckých států shrnul Aristoteles v knize Politika, jež je počítána k základům politické vědy a sociologie.

GIBBON EDWARD (1737–1794)

Anglický historik. Proslul svým šestisvazkovým dílem „Zánik a pád římské říše“ (The Decline and Fall of the Roman Empire), v němž dramaticky vylíčil úpadkové období starověké římské říše počínajíc druhou polovinou 1. století n. l., její rozpad a další historický vývoj v této oblasti během třinácti století až do křižáckých válek.

HOBBS THOMAS (1588–1679)

Anglický materialistický filosof, ideolog velké buržoazie 17. stol. Své sociálně-politické názory vyložil Hobbes v díle Leviathan, kde státu přikládá zásluhu za udržení míru ve společnosti. Byl přívržencem absolutní monarchie, odmítal však teologické dogma o státu a jeho božském původu.

LOCKE JOHN (1632–1704)

Anglický filosof, navazoval na myšlenkové linie Baconovy a Hob-

Str.

besovy. Ve svém díle *Zkoumání o lidském rozumu* potíral Descartovo učení o „vrozených idejích“ a zastával ne zcela důsledně stanovisko materialistické, jež později rozvíjeli francouzští materialisté 18. stol. Byl zastáncem konstituční monarchie a obhájcem třídních zájmů anglické buržoazie. Podle Locka hlavním úkolem státu je hájit soukromé vlastnictví.

99 HUME DAVID (1711–1776)

Anglický buržoazní filosof, historik a ekonom. Popíral nejen možnost poznání věcí, ale i jejich existence. Ostrou kritiku Humovy filosofie provedl V. I. Lenin v knize *Materialismus a empirio-kriticismus*.

PRŮMYSLOVÁ REVOLUCE

Rozlišování kapitalistických trhů a rostoucí snaha po zvyšování zisku vyvolávala potřebu zdokonalit výrobní techniku pomocí strojů a nahradit tak pomalou a nedokonalou výrobu v manufakturách. Strojový velkopřůmysl vznikl v Anglii, v jejím tehdy nejdůležitějším průmyslovém odvětví, textilní výrobě. Tento proces znamenal průmyslovou revoluci, která proběhla v poslední třetině 18. stol. a v první čtvrtině 19. stol. v Anglii, pak ve Francii a konečně v Německu. Ve Spojených státech amerických vznikl velký průmysl na počátku 19. stol.

HEGEL GEORG WILHELM FRIEDRICH (1770–1831)

Nejvýznamnější představitel německé klasické idealistické filosofie, objevitel zákonů dialektiky, jež první dovedl užít. Dialektiku ještě chápal idealisticky, jak říká Marx, „stojí ještě u něho na hlavě“. Dialektická metoda v podstatě učí, že zdrojem vývoje je boj protikladů, že vývoj se děje přeměnou kvantitativních změn v kvalitativní. — Sociálně politické názory Hegelovy byly reakční. Marx a Engels, kteří převzali z Hegelovy dialektiky jen její racionální jádro, vytvořili novou dialektickou metodu, jejímž vědeckým základem je materialistická filosofie.

KANT IMMANUEL (1724–1804)

Zakladatel německé idealistické filosofické školy druhé poloviny 18. a počátku 19. století. Podle Lenina je základním rysem Kantovy filosofie smíření materialismu s idealismem, kompromis mezi oběma, spojení různorodých, protikladných filosofických směrů v jeden systém.

LEIBNITZ GOTTFRIED Wilhelm (1646–1761)

Německý idealistický filosof, snažící se smířit náboženství s vědou. Značné zásluhy si získal Leibnitz v rozvoji věd matematických.

BOAS FRANZ (1858—1942)

Americký etnolog a antropolog. Studoval nejdříve život Eskymáků a pak poměry v obou částech Ameriky. Jeho hlavní prací je Příručka jazyků amerických Indiánů.

FRAZER JAMES GEORGE (1854—1941)

Anglický folklorista a antropolog. Psal o folklóru ve Starém zákoně a o totemismu.

HUXLEY THOMAS HENRY (1825—1895)

Anglický přírodovědec, přítel a stoupenec Darwinův, na obranu jehož učení literárně vystupoval. V přírodovědě byl materialistou, ve filosofii stál uprostřed mezi materialismem a idealismem.

WALLACE ALFRED RUSSEL (1823—1913)

Anglický přírodovědec a cestovatel. Je pokládán za spoluvůdce Darwinovy vývojové teorie.

SPENCER HERBERT (1820—1903)

Anglický reakční filosof a sociolog. V sociologii byl spoluvůdce tzv. organické teorie společnosti, podle které lidská společnost se podobá živočišnému organismu a je podřízena biologickým zákonům. Tyto názory vedly Spencera až k rasistickým závěrům. Jeho filosofie, kterou kritizoval Lenin ve spise Stát a revoluce, chce podávat sjednocený obraz světa, založeného na stálém pohybu hmoty, který je jednak vývojem, jednak rozkladem.

JAMES WILLIAM (1842—1910)

Americký psycholog a idealistický filosof, zakladatel pragmatismu, filosofického směru, jehož hlavní zásadou je ztotožňování pravdy s tím, co je prakticky prospěšné a užitečné.

BACON FRANCIS (1561—1626)

Anglický filosof, podle Marxe zakladatel anglického materialismu a experimentálních věd nové doby. Ve své filosofii hájil stanovisko, že každá věrohodná pravda se musí opírat o největší možné množství faktů a zkušeností, jejichž srovnáváním lze přecházet od jednotlivého, zvláštního, k obecnému, k závěrům.

MONISMUS (z řeckého monos — jeden)

Filosofické učení, které na rozdíl od dualismu pokládá za základ všeho jsoucna jeden princip. Existuje monismus materialistický a idealistický. Materialisté pokládají za základní princip hmotu.

NIETZSCHE FRIEDRICH (1844—1900)

Německý reakční filosof, jehož světový názor je naplněn nenávistí k duchu revoluce, k lidovým masám. Hlásal naprostý individualis-

Str.

mus bez ohledu na všechny právní a mravní zásady a opěvoval kult síly.

102 VĚDECKÝ DETERMINISMUS

Učení o zákonitě nutné souvislosti všech událostí a jevů a jejich příčinné podmíněnosti. Marxismus-leninismus uznává nutnost v přírodě i v dějinách, ale zdůrazňuje znalost objektivních zákonů vývoje společnosti a poznání přírodních zákonů, jež umožňují plánovitě jejich využití pro určité cíle, tedy i pro politický boj proletariátu.

109 RUSKIN JOHN (1819–1900)

Anglický myslitel, který své literární práce věnoval estetice, otázkám náboženství, národního hospodářství a socialismu. V podstatě idealista, působil užlechtilostí svých záměrů a upřímným humanismem.

OTÁZKA MAXIMA

Maximální koncentrace kapitálu znamená soustředování obrovského bohatství v rukou stále užšího okruhu osob. Tím, že kapitalismus rozvíjí výrobní síly a zespočtenňuje výrobu, vytváří materiální předpoklady pro socialismus. Plodí tím zároveň svého hrobaře, dělnickou třídu, která vystupuje jako vůdce pracujících a vykořisťovaných mas. To je dějinná tendence vývoje kapitalistického výrobního způsobu.

110 LASSALLE FERDINAND (1825–1864)

Německý socialistický spisovatel a agitátor, zakladatel Všeobecného německého dělnického spolku. Byl oportunistickým činitelem v německém dělnickém hnutí, u něhož hledali argumenty všichni, kdo se snažili o třídní mír mezi proletariátem a buržoazií. Lasalle zavrhoval revoluční boj dělníků, ale snažil se o vybudování masové politické strany dělnické třídy. Lasallovské teorie ostře kritizoval Marx i Lenin.

111 NEJMODOKREVNĚJŠÍ

Znamená zde nejkonzervativnější — modrá byla odedávna barva konzervativní strany torýů.

115 HAECKELŮV MONISMUS

Spočíval na důsledně přírodovědecky materialistickém stanovisku německého filosofa Ernsta Haeckela, který jím bojoval proti náboženství a teologii. R. 1906 založil Haeckel Svaz monistů a byl jeho prvním předsedou.

SPENCERŮV MATERIALISTICKÝ DETERMINISMUS

Byl formulován jeho názorem, že lidská společnost je podřízena

Str.

biologickým zákonům, a proto vztahy mezi třídami, které jsou vlastní kapitalismu, mají prý „přirozený“ a „věčný“ charakter stejně jako kapitalistické soukromé vlastnictví výrobních prostředků.

115 DARWINŮV EVOLUCIONISMUS

Anglický vědec Charles Darwin (1809–1882), zakladatel materialistické biologie, dokázal, že živočichové i rostliny se neustále mění a vytvářejí nové formy. Darwinova evolucionistická (vývojová) teorie, ukazující přírodní historický vývoj, pomohla potříti náboženské ideje, avšak nepočítala s dialektickou existencí skoků ve vývoji organické přírody.

LAPLACE PIERRE SIMON de (1749–1827)

Francouzský matematik a fyzik. Je znám svou teorií o vzniku světů, tzv. mlžinovou – nebulární, kterou filosoficky podepřel Kant.

KANT (viz pozn. ke str. 99)

Ve svém prvním, průpravném období (r. 1755) vydal spis *Allgemeine Naturgeschichte und Theorie des Himmels* (Obecná přírodověda a teorie nebe), podle níž na počátku byla chaotická světová mlhovina s prvky různé hustoty, na niž působily síly přitažlivé a odpudivé a tak se prý poněmáhlu z ní vyvinula dnešní sluneční soustava.

ALCOTTOVÁ LOUISA MAY (1832–1888)

Americká spisovatelka, která za občanské války pracovala jako ošetřovatelka u armády Severu, oblíbená autorka dětských knížek, z nichž nejznámější je kniha „Ženušky“ (*Little Women*), veselé vyprávění o jejím vlastním dětství.

CORELLIOVÁ MARIE (1854–1924)

Anglická spisovatelka, ve své době oblíbená autorka romantických společenských románů, které dnes už pozbýly významu.

EMERSON RALPH WALDO (1803–1882)

Americký básník a filosof, původem z Bostonu ze staré puritánské rodiny. V jeho hlavním básnickém díle „Příroda“ (*Nature*) se projevuje idealistické založení a sklon k metafyzice. Vydal též několik svazků esejí, dopisů a svůj deník.

HOWELLS WILLIAM DEAN (1837–1920)

Americký spisovatel, jediný ze skupiny autorů vyjmenovaných v tomto místě textu, který má význam pro vývoj americké literatury. Byl novinářem a redaktorem vlivného bostonského literár-

Str.

nlbo mšstčnku *Atlantic Monthly* a projevil své socialistické názory v řadě realistických románů, v nichž se zabýval problémy industrializace a ekonomických změn v americkém životě.

116 SUDERMANN HERMANN (1857—1928)

Německý dramatik, který ve své době silně zapůsobil pesimisticky kritickými hrami, například „Vlast“ (Heimat) a „Čest“ (Die Ehre).

HAUPTMANN GERHARDT JOHANN (1862—1946)

Německý dramatik pokrokových tendencí, autor proslulých realistických her se sociální tematikou, například „Tkalci“ (Die Weber) a „Před východem slunce“ (Vor Sonnenaufgang).

JAMES HENRY (1843—1916)

Americký spisovatel a diplomat, který téměř celý život strávil v Evropě, hlavně v Londýně. Většina jeho románů je z prostředí vyšších společenských vrstev a jejich problematikou je téměř vždy působení vyzrálejší evropské civilizace a kultury na Američany: z této skupiny je nejznámější jeho román „Velvyslanci“ (The Ambassadors). Pro našeho čtenáře jsou však významnější jeho romány z amerického života, například „Američan“ (The American), „Washingtonské náměstí“ (Washington Square) a „Ženy z Bostonu“ (The Bostonians).

117 WILDE OSCAR (1856—1900)

Anglický spisovatel a dramatik, který ve svém díle zdůrazňoval estetické a artistní prvky až do umělecké výlučnosti a dekadentní osamocnosti. V jeho složité osobnosti lze nalézt i jisté projevy sympatií k anarchistickému socialismu.

MORRIS WILLIAM (1834—1896)

Anglický básník, výtvarný pracovník a sociální reformátor, který se s idealistickým záměrem snažil spojit estetickou výchovu lidu s úsilím o jeho sociální povznesení. V tomto duchu požadoval ve svých spisech socializaci umění a toužil „učiniti tuto zemi krásným a blaženým místem“.

122 DRUMMOND HENRY (1851—1897)

Anglický geolog a náboženský filosof. Snažil se smířit Darwinovo učení o vývoji s biblickým výkladem.

WEISMANN AUGUSTIN (1854—1914)

Německý biolog, který spolu s biologem Morganem vytvořil reakční protidarwinovský směr, jehož základem byl nesprávný výklad dědičnosti organismu, který prý spočívá ve zvláštní látce

Str.

vykyskující se v organismech, a to v chromozomech pohlavních buněk.

123 ŠPANĚLSKO-AMERICKÁ VÁLKA

Vyhlášena v roce 1898 Spojenými státy Španělsku, které doposud mělo koloniální panství na ostrovech v Karibském moři. Válka netrvala ani půl roku, protože válečné loďstvo Spojených států brzy porazilo válečné loďstvo Španělska.

128 BIERCE AMBROSE (1842—1914)

Americký novinář a spisovatel, autor duchaplných satirických článků, fantastických povídek a básní a pesimistických esejí o soudobé civilizaci.

133 HARDY THOMAS (1840—1928)

Anglický spisovatel a básník, autor románů a povídek z venkovského života, jejichž námětem je boj člověka proti silám přírody a osudu, lhostejným vůči lidskému utrpení. Jeho nejproslulejší romány „Juda prosáček“ (Jude the Obscure) a „Tess z d'Urbervillů“ vyšly v českých překladech.

PROTEOVSKÉ NÁLADY

Proměnlivé, nevyzpytatelné nálady. Přídavné jméno je odvozeno od jména Protea, syna řeckého boha moře Poseidona, který podle pověstí z antické mytologie hlídal stáda mořských netvorů a uměl prorokovat budoucnost. Aby unikl těm, kdo na něm vyzvídali, proměňoval svou podobu, nebo jim dával nevyzpytatelné odpovědi.

139 DEBSŮV SEN

Eugene Debs (1855—1926) byl železničář, organizátor Americké unie železničářů a její první předseda. Proslavil se v celých Spojených státech v r. 1894 při velké stávce železničářů a byl na půl roku odsouzen do vězení. Stál v čele Socialistické strany a pětkrát kandidoval v prezidentských volbách.

185 GARRISON WILLIAM LLOYD (1805—1879)

Americký právník a novinář, horlivý bojovník proti otroctví a vydavatel protitrokářských časopisů. V roce 1833 založil ve Filadelfii „Americkou protitrokářskou společnost“.

197 „HONBA ZA SNARKEM“

(The Hunting of the Snark) — posměšně hrdinská básnická skladba Lewise Carolla (1832—1898), autora velmi oblíbené dětské knihy „Alenka v kraji divů“ (Alice in Wonderland). Snark je fantastický netvor, za nímž se děti vypraví na hon.

Str.

200 HAYMARKETSKÁ VZPOURA

Vypukla v květnu r. 1886 na Haymarketském náměstí v Chicagu, když při politické demonstraci lidových mas vybuchla bomba, policie začala střílet do lidí a několik účastníků demonstrace zranila. Nastala panika a policie zatkla několik známých anarchistů, kteří pak byli odsouzeni k smrti, ačkoli nebylo průkazně zjištěno, že měli s výbuchem bomby něco společného.

214 STEVENSON ROBERT LOUIS (1850–1894)

Skotský spisovatel, autor proslulých romanticky dobrodružných příběhů pro mládež „Poklad na ostrově“ (Treasure Island) a „Únos“ (Kidnapped), románů a novel pro dospělé, například „Podivný případ doktora Jekylla a pana Hyda“ (The Strange Case of Dr. Jekyll and Mr. Hyde). Podnikal plavby po Tichém oceánu, jež mu poskytly náměty k několika knihám povídek a črt, a usadil se na jednom z ostrovů Samojského souostroví, kde zemřel.

CONRAD JOSEPH (1857–1924)

Anglický spisovatel polského původu, který už jako nedospělý chlapec sloužil v britském obchodním loďstvu. Proslul zvláště svými romány a povídkami z námořnického a exotického prostředí na jihomořských ostrovech. Jeho díla vynikají podivuhodným stylem a bystrými a jemnými psychologickými studiemi postav. Novela „Mládí“ (Youth) líčí plavbu v chatrné lodi na rozbořeném moti.

MELVILLE HERMANN (1819–1891)

Americký spisovatel, který prožil dobrodružné mládí na moři, nejdříve na velrybářské lodi a pak ve válečném námořnictvu. Jeho nejslavnější román je „Bílá velryba“ (Moby Dick), v románech „Typee“ a „Omoo“ vylíčil své dobrodružné příhody v jižním Tichomoří a na ostrovech lidojedů a v románu „Bílá kazajka“ (White Jacket) své zážitky na válečné lodi. Tato kniha přispěla ke zrušení tělesných trestů ve válečném loďstvu Spojených států. Všechny jeho vyjmenované romány vyšly v českých překladech.

245 JACK JEČMÍNEK

(John Barleycorn) v anglickém a americkém prostředí je zosobněním nadměrného pití, původně piva vyráběného z ječmenného sladu a v širším smyslu alkoholických nápojů vůbec.

257 REVOLUČNÍCH VOJSK PROTI DIAZOVÍ

Mexickému diktátorskému prezidentovi, proti němuž vedl vzpouru odvážný dobrodruh Pancho Villa (1877–1923)

Str.

opředený lidovými legendami. Jeho protivníkem, který se rovněž vzbouřil proti Diazovi a kterého Spojené státy uznaly za hlavu státu, byl Carranza. President Wilson v roce 1916 vyslal proti Villovi vojenskou trestnou výpravu, která ho měla zajmout. Carranza však protestoval proti vpádu vojska Spojených států do Mexika, proto se vojsko stáhlo do přístavu Vera Cruz. Villa byl později zavražděn. Americký novinář a spisovatel John Reed, autor proslulé knihy „Deset dní, které otřáslы světem“, v mládí sympatizoval s Villou, jako dopisovatel ho provázal na jeho taženích a své zážitky vylíčil v knize „Vzpouira v Mexiku“ (Insurgent Mexico).

297 PURPUROVÉ PŘÍSTAVY SEDMI MOŘÍ

Básnická metafora z Kiplingových veršů ve sbírce „Sedm moří“ (Seven Seas).

351 STANLEY HENRY MORTON (1841 – 1904)

Americký novinář a cestovatel, vyslaný v r. 1871 listem *New York Herald* do Střední Afriky, aby tam pátral po zmizelém skotském misionáři a badateli Davidu Livingstonovi. Své zážitky vylíčil v oblíbené dobrodružné knize „Jak jsem našel Livingstona“ (How I found Livingstone). Stanley první probádal velkou část Střední Afriky a své objevy z druhé výpravy do Afriky živě popsal v knize „Nejtemnější pevninou“ (Through the Dark Continent).

máj

**knihovna
československé
mládeže
svazek 30**

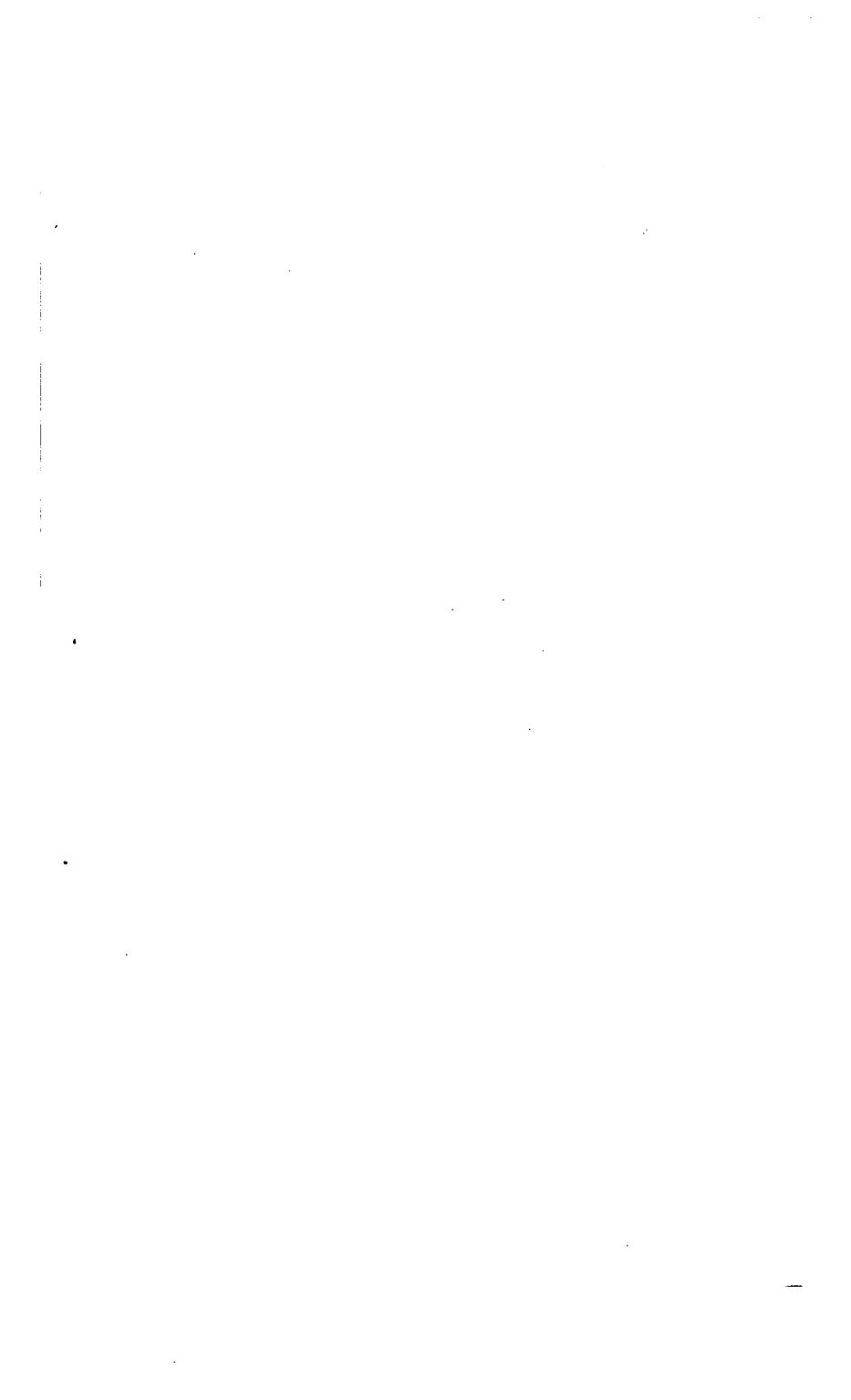
Irving Stone

Námořník na koni

**Z anglického originálu
Sailor on Horseback
vydaného nakladatelstvím
Doubleday & Company
v New Yorku roku 1947
přeložila Jarmila Fastrová
Poznámkami opatřili Jiří Žantovský
a Jarmila Fastrová
Doslov napsal Jiří Žantovský
Obálku a vazbu navrhl
Miroslav Váňa
Graficky upravil Antonín Dvořák
Vydala Mladá fronta
nakladatelství ČSM
jako svou 1892. publikaci
Edice Máj, svazek 30, 312 stran,
8 stran křídlové přílohy
Odpovědná redaktorka Zora Wolfová
Technický redaktor Vladimír Vácha
Vytiskly Polygrafické závody n. p.,
závod 2, Bratislava
20,64 AA, 20,90 VA. D — 16*30380
Náklad 135 500 výtisků. 1. vydání
Praha 1963. 63/VIII — 8**

23—115—63

13-9 Cena váz. výt. Kčs 14,50



**HOME USE
CIRCULATION DEPARTMENT
MAIN LIBRARY**

This book is due on the last date stamped below.
1-month loans may be renewed by calling 642-3405.
6-month loans may be recharged by bringing books
to Circulation Desk.

Renewals and recharges may be made 4 days prior
to due date.

**ALL BOOKS ARE SUBJECT TO RECALL 7 DAYS
AFTER DATE CHECKED OUT.**

MAR 14 1974 1 X

REC'D CIRC DEPT FEB 2 1974 9 8

DEC 7 1984

REC CIR DEC 10 1984

LD21-A30m-7,'73
(R2275810)476-A-32

General Library
University of California
Berkeley

GENERAL LIBRARY - U.C. BERKELEY



8000726005

